

State Resources Council

Wednesday, April 5, 2006

8:30 AM

Reed Hall

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Resources Council

Start Date and Time: Wednesday, April 05, 2006 08:30 am

End Date and Time: Wednesday, April 05, 2006 09:30 am

Location: Reed Hall (102 HOB)

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 265 Hunting Lands by Brown

HB 1031 CS Pawnbroking by Kyle

HCB 6003 Resale of Tickets by Criminal Justice Committee, Stargel, Llorente

HB 7175 Vessels by Environmental Regulation Committee

HB 7207 Water Management Districts by Agriculture & Environment Appropriations Committee

HB 7239 Department of Agriculture and Consumer Services by Agriculture Committee

NOTICE FINALIZED on 04/03/2006 15:53 by REARDON.BILLIE

BILL #: HB 265 Hunting Lands
SPONSOR(S): Brown and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 430

SUMMARY ANALYSIS

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes limited government – The bill expands the current responsibilities of the FWCC to require FWCC to maintain lands open for public hunting at current acreage levels by replacing any lands that are removed from public hunting.

B. EFFECT OF PROPOSED CHANGES:

Background Information

Current Law

Section 372.002, F.S., provides legislative intent that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by s. 9, Art. IV of the State Constitution, which creates and specifies the authority of the Florida Fish and Wildlife Conservation Commission (FWCC).

Section 372.21, F.S., authorizes the FWCC, with the approval of the Governor, to acquire, in the name of the state, lands and waters suitable for the protection of game, fish, non-game birds, fur-bearing animals, or for hunting purposes by purchasing, leasing, receiving the land as a gift, or otherwise obtaining such land. Such lands acquired by FWCC are referred to as "state game lands." Section 372.21, F.S., also authorizes FWCC to erect fences and buildings necessary to properly maintain and protect the land for its intended purposes.

Hunting Lands

According to the FWCC, as of November 2005, there were approximately 5.6 million acres of land open for public hunting in the state's public hunting areas system. This total includes lands owned and/or managed by a variety of governmental agencies and private landowners. Private landowners may partner with the FWCC to have their land used for hunting by the public. Private land owners may also designate their land as private hunting land not open to the public.

Public Owned Hunting Lands

Approximately 2.85 million acres in the public hunting area system are owned by the State of Florida. FWCC is the lead manager for about 1.1 million acres. The Department of Agriculture and Consumer Services' Division of Forestry is the lead manager for about 900,000 acres. The five Water Management Districts are lead manager and/or the owner of about 730,000 acres. Approximately 56,000 acres are managed by the State Armory Board, 53,000 acres are managed by the Department of Environmental Protection, and 16,000 acres are managed by the Department of Corrections.

Approximately 2.32 million acres in the state's public hunting area system are federally-owned property including 1.14 million acres managed by the U.S. Forest Service, 596,000 acres managed by the Department of Defense, 566,000 acres managed by the National Park Service, 8,000 acres managed by the Department of the U.S. Army Corps of Engineers, and 7,000 acres managed by the U.S. Fish and Wildlife Service.

Privately Owned Hunting Lands

The state's public hunting area system includes approximately 390,000 acres which are privately-owned, including about 200,000 acres owned by private timber and land companies including Plum Creek, St. Joe, Foley Land and Timber, and Rayonier, and about 190,000 acres owned by the Miccosukee Tribe of Indians.

Concerns Regarding Loss of Public Access to Hunting Lands

According to the FWCC, there is concern among several FWCC stakeholder groups and hunters in general that lands currently open for public hunting are facing pressures (such as development, re-development, and urban encroachment), that may result in the loss of public access for hunting.¹

A survey of Florida hunters conducted by FWCC in the spring of 2005 reflected strong concern about the loss of hunting opportunities and places to hunt. The main concern expressed by people surveyed who hunt on public lands, as reported by FWCC, was that these hunting lands are too crowded.²

According to FWCC, a factor that contributes to these concerns and the perception that public hunting lands are declining is the trend in recent years of privately-owned lands being withdrawn from the state's public hunting area system. Since the year 2000, approximately 315,000 acres of privately-owned land have been withdrawn from the public hunting area system and closed to public access. Most of this land has remained open for hunting under a private hunting lease program where the landowner can generate much higher revenues than is possible under the public hunting area system. The private hunting lease system is driven by demand and the market for quality hunting opportunities and is entirely a private sector activity.³

While privately-owned lands in the state's public hunting area system have declined significantly in recent years, the amount of state-owned land in the state's public hunting area system has increased. Since the year 2000, 10 new public hunting areas comprising about 200,000 acres have been established and added to the system. During the same period, approximately 250,000 acres of land have been acquired and added to existing public hunting areas across the state.⁴

According to a 2003 national survey report by Responsive Management conducted for a national organization called the Conservation Fund, Florida ranked 2nd in the nation in the percentage of lands leased for public hunting by the state and 9th in the nation in the total acres of state-owned hunting lands. In that same report, Florida ranked 40th in the nation in the percent of state-controlled hunting land that is owned by the state and 4th in the nation in the amount of leased state hunting land. When asked by the surveyors what percent of state-controlled land that FWCC anticipates will be available for hunting in five years, Florida (along with 24 other states) was ranked #1. As part of the survey, all the states were asked to rate themselves on a scale of 1 (poor) to 10 (excellent) on the geographical distribution of their hunting acres through out the state, the accessibility of the hunting acres, and the quality of the hunting acres. Florida rated these issues 5.80, 7.00, and 6.80 respectively.

National Efforts on No-Net-Loss Hunting Land Laws

HB 265 is similar to legislation being introduced (and in a few states passed) as part of a proposal by the National Rifle Association's Institute for Legislative Action (NRA-ILA) and other hunting organizations. In a publication by the NRA-ILA, entitled "Will Darkness Fall on the Land?", bills similar to HB 265 have been filed in several states. No-net-loss hunting land legislation has passed in Illinois, Georgia, and Maryland, with Pennsylvania, Oregon, and Florida having such bills introduced.

In addition, legislation (Senate Bill 1522 – introduced July 28, 2005) has been filed at the federal level which requires that federal public land management decisions and action, should, to the maximum extent practicable, result in no net loss of land area available for hunting opportunities on federal public land. The bill would also require each federal agency with authority to manage federal public land on which recreational hunting occurs to submit to certain congressional committees a report describing

¹ Personal communication with FWCC staff.

² Id.

³ Id.

⁴ Id.

any federal public land that was closed to hunting at any time during the preceding year, the reason for the closure, and which land was opened to hunting to compensate for the closure of other hunting land.

Effects of Proposed Changes

The bill specifies that land management decisions and actions, including decisions made by private owners to close hunting land managed by the FWCC, shall not result in any net loss of habitat land acreage available for hunting opportunities on FWCC-managed lands that exists on the effective date of the bill. The bill also requires FWCC to expeditiously find replacement acreage for hunting to compensate for the closures of any existing hunting land.

The bill directs FWCC, other state agencies, and water management districts to maintain lands open for public hunting at current acreage levels and to replace any lands that are removed from public hunting.

The bill specifies that other state agencies and water management districts "shall assist, coordinate and cooperate with the Commission to allow hunting" if their lands are "determined by the Commission to be suitable for hunting." The bill also requires these agencies and water management districts to "cooperate with the Commission to open new, additional hunting lands to replace lost hunting acreage."

The bill requires FWCC to submit annual reports to the Legislature regarding lands closed to hunting and how the loss of such lands is compensated by opening replacement lands. The bill also requires other agencies and water management districts to submit annual reports by October 1st to the Commission and the Legislature regarding lands open for public hunting, lands not open for public hunting, and the location of these lands by county.

C. SECTION DIRECTORY

Section 1: Creates s. 372.0025, F.S., provides definitions; requires certain lands owned, managed, or leased by the Fish and Wildlife Conservation Commission to be used for hunting; requires the Commission to provide comparable acreage for hunting for any loss of existing hunting lands; requires agencies and water management districts to allow certain lands to be used for hunting; and requires the Commission to submit annual reports to the Legislature and for agencies and water management districts to submit annual reports to the Commission.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be no fiscal impact or burden on private landowners who choose to remove their lands from the public hunting area system.

There are significant fiscal benefits for the private sector associated with maintaining lands open for public hunting. Public hunting lands have significant positive economic impacts on communities around public hunting areas, particularly in rural areas. Economic impacts are associated with the purchase of hunting supplies, camping supplies, lodging, vehicles, and fuel. Fiscal impacts, however, vary highly depending on the location of the area, size of the area, number of hunters using the area, and type of hunting among other factors.

D. FISCAL COMMENTS:

According to FWCC, estimates of the fiscal impacts HB 265 are unknown since any fiscal impact would vary greatly depending on how much acreage is lost to public hunting and what approach is necessary to replace the lost acreage. FWCC notes that the recent 5-year trend in the loss and gain of lands for public hunting indicates that more lands have been gained than lost due to state land acquisition programs adding lands to the public hunting area system. This trend is expected to continue in the near term, and would minimize any fiscal impact associated with HB 265.⁵

However, if significant hunting acreage is lost during a given year, FWCC would have to identify and open new lands for public hunting "expeditiously". Any fiscal impact would depend on comparing the cost of FWCC managing the lands that are lost from public hunting with the cost of managing new "replacement" lands that would be opened for public hunting.

For example, if it cost \$5 per acre per year to manage a property that is removed from the public hunting area system, and it cost \$10 per acre per year to manage the replacement property, the realized recurring fiscal impact would be an increased management cost of \$5 per acre per year.

To make this assessment, FWCC has identified a number of factors which affect the costs of providing public hunting opportunities. According to FWCC, these costs may vary greatly depending on several factors. For example, the cost of providing public hunting is lower on properties that have suitable infrastructure (e.g., roads, fences, camp grounds, and check stations) compared to properties where this infrastructure must be developed. Another factor is the required level of habitat management (e.g., prescribed burning, mowing, and food plantings) and game population management (e.g., animal population surveys, harvest monitoring, and development of regulations).

Costs are higher if extensive habitat management or game population management is required for FWCC to maintain public hunting. Also, the intensity of public use is an important factor in the cost of providing public hunting. Management costs are lower on properties that are open for public hunting to a limited number of people on a limited basis such as a few weeks, compared to properties open to a large number of people for several months. Due to these varying factors, FWCC estimates that the cost of managing public hunting land can range from less than \$1 per acre per year to over \$30 per acre per year.

According to FWCC, there are three basic options for replacing lost hunting lands. These options are:

- FWCC coordinating with other governmental (state and federal) agencies to identify any publicly-owned lands that are not currently open for public hunting and are suitable for opening. The feasibility of this option may rely heavily on the availability of additional funding to cover the costs of providing public hunting opportunities on new cooperative public hunting areas. The cost of providing public hunting on lands where other agencies are cooperating with FWCC generally

⁵ Id.

ranges between about \$1 per acre per year to about \$10 per acre per year.

- FWCC pursuing state acquisition of new lands through the Florida Forever program or a successor program. In the past 5 years, about 450,000 acres or about 90,000 acres per year have been purchased by the state and added to the public hunting area system. Given the current real estate market and the cost of land, this rate of acquisition is likely to slow down. The fiscal impacts of this option on FWCC would include any acquisition costs where FWCC uses In-holdings and Additions funds (currently \$4.5 million annually from Florida Forever) to acquire additions to the public hunting area system. Under this option, FWCC would be the lead agency manager. Currently, the non-recurring startup costs for opening such lands for public hunting are approximately \$30 per acre depending on the need for infrastructure such as roads and check stations to facilitate public hunting. The current recurring costs, including the cost of all land management activities, are approximately \$30 per acre. Land management funding is allocated to FWCC for new lands acquired through the Florida Forever Program, but funding levels vary from year-to-year and according to FWCC, costs are increasing for the management for such lands.
- FWCC leasing privately-owned lands for public hunting through its recreational user permit (user pay) program pursuant to s. 372.57(8)(i)1, F.S. Under the user pay program, the FWCC leases privately-owned lands for public hunting by establishing direct user permit fees, selling the permits, and then transferring the resulting revenues to the landowner. The FWCC works with the landowner to set hunter quotas and user fees at levels that will generate a desired level of lease revenue for the landowner and provide suitable hunting opportunities for the public. Under this program, the landowner is responsible for managing the land and providing adequate infrastructure for public hunting. There are currently about 200,000 acres of land in the user pay program. The landowners currently in this program have worked with the FWCC to keep these hunting opportunities affordable for the public. According to FWCC, this program has slowed the loss of private lands from the public hunting areas system, but has not stopped the loss. Also, this option is not attractive to many private landowners primarily because they can get higher revenues from private hunting leases without involving the FWCC and without allowing public access to their lands. The current average lease rate for private lands in the user pay program is about \$3 per acre per year. The current market value for private hunting leases can range from about \$4 to \$15 per acre per year depending on the location in the state, proximity to urban areas, and management history of the property among other things.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities or counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

When a legislative act requires FWCC action on the subject of fish or wildlife, there are potential legal implications as to whether such action conflicts with Article IV, Section 9, Florida Constitution that gives the Commission "...regulatory and executive powers of the state with respect to wild animal life...". However, that section of the Constitution also allows legislative acts which are "...in aid of the Commission, not inconsistent with..."

The bill states that "Commission-managed lands shall be open to access and use for hunting..." It does not appear that the objectives of the bill are inconsistent with the Commission's authority to regulate and manage hunting because the bill also has conditional language that allows the

Commission to limit hunting when necessary for public safety, fish and wildlife management, homeland security or as otherwise limited by law. According to FWCC, this conditional language is worded broadly enough to allow the Commission adequate flexibility to decide where to allow hunting.

The provision in the bill that requires a no net loss of land for hunting may pose a potential conflict with Article IV, Section 9. It requires FWCC to maintain a minimum amount of state acreage for hunting, without consideration for game resources or factors beyond the control of FWCC, such as development and urban encroachment and the extent to which other agencies or water management districts are capable of or willing to open up land for hunting. According to FWCC, the primary legal concerns could be removed if the "shall" standard was changed to a permissive standard.

B. RULE-MAKING AUTHORITY:

Although not specified for in the bill, FWCC believes that the bill would potentially require rule-making by FWCC to establish and adopt regulations to allow public hunting on lands that are not currently open for hunting, but would be added to replace lands removed from public hunting.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by the FWCC:⁶

There could be limited opportunities for replacing acreage that may be removed from FWCC's public hunting area system. Approximately 80% of the acreage in the state's public hunting area system is not directly owned or managed by the FWCC. Such lands are referred to as "cooperator" lands where the FWCC administers public hunting on the property in cooperation with another state agency or landowner. The bill would place most of the responsibility for maintaining and replacing hunting lands on the FWCC, yet FWCC does not hold management or final decision-making authority for a majority of these lands.

At the present time, all lands suitable for public hunting under FWCC ownership or management are open for public hunting. To replace lost acreage, FWCC would need to either: locate lands managed by other agencies that are not currently open for public hunting and seek willingness from the agency to open such lands for hunting of those lands; identify potential hunting lands that are privately-owned and which could be leased through the FWCC's recreational user permit program pursuant to s. 372.57(8)(i)1, F.S., or pursue state acquisition of acreage to replace lost public hunting lands.

FWCC has worked with and will continue to work with other governmental agencies and private landowners to identify potential hunting lands for the public. This type of cooperation is currently occurring in many cases, but the bill would provide a statutory basis and direction for FWCC to make the determination regarding the suitability for public hunting on all state-owned lands.

There is currently no dedicated funding source for leasing additional private lands for public hunting, particularly at current market rates for leasing hunting lands.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

HB 265

2006

A bill to be entitled
An act relating to hunting lands; creating s. 372.0025,
F.S.; providing definitions; requiring certain lands
owned, managed, or leased by the Fish and Wildlife
Conservation Commission to be used for the purpose of
hunting; requiring the commission to support, promote, and
enhance hunting opportunities; requiring the commission to
provide comparable acreage for any loss of existing
hunting lands; requiring agencies and water management
districts to allow certain lands to be used for the
purpose of hunting; requiring annual reports to the
commission and Legislature; providing an effective date.

WHEREAS, section 372.002, Florida Statutes, protects the
right of citizens of this state to hunt, and

WHEREAS, access and availability of hunting lands is
essential to the exercise of that right, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 372.0025, Florida Statutes, is created
to read:

372.0025 No net loss of hunting lands.--

(1) As used in this section, the term:

(a) "Commission" means the Fish and Wildlife Conservation
Commission.

(b) "Commission-managed lands" means those lands owned by
the commission, those lands owned by the state over which the

29 commission holds management authority, or those privately owned
30 lands that are leased or managed by the commission.

31 (c) "Hunting" means the lawful pursuit, trapping,
32 shooting, capture, collection, or killing of wildlife or the
33 lawful attempt to pursue, trap, shoot, capture, collect, or kill
34 wildlife.

35 (2) Commission-managed lands shall be open to access and
36 use for hunting except as limited by the commission for reasons
37 of public safety, fish or wildlife management, or homeland
38 security or as otherwise limited by law.

39 (3) The commission, in exercising its authority under the
40 State Constitution and statutes, shall exercise its authority,
41 consistent with subsection (2), in a manner that supports,
42 promotes, and enhances hunting opportunities to the extent
43 authorized by state law.

44 (4) Commission land management decisions and actions,
45 including decisions made by private owners to close hunting land
46 managed by the commission, shall not result in any net loss of
47 habitat land acreage available for hunting opportunities on
48 commission-managed lands that exists on the effective date of
49 this act. The commission shall expeditiously find replacement
50 acreage for hunting to compensate for closures of any existing
51 hunting land.

52 (5) Any agency or water management district that owns or
53 manages state lands shall assist and coordinate and cooperate
54 with the commission to allow hunting on such lands if such lands
55 are determined by the commission to be suitable for hunting. To
56 ensure no net loss of land acreage available for hunting,

57 agencies and water management districts shall cooperate with the
58 commission to open new, additional hunting lands to replace lost
59 hunting acreage.

60 (6) By October 1 of each year, the executive director of
61 the commission shall submit to the Legislature a written report
62 describing:

63 (a) The acreage managed by the commission that was closed
64 to hunting during the previous fiscal year and the reasons for
65 the closures.

66 (b) The acreage managed by the commission that was opened
67 to hunting to compensate for closures of existing land pursuant
68 to subsection (4).

69 (7) By October 1 of each year, any agency or water
70 management district that owns or manages state lands shall
71 submit a written report to the commission and the Legislature
72 that includes:

73 (a) A list of properties that were open for hunting during
74 the previous fiscal year.

75 (b) A list of properties that were not open for hunting
76 during the previous fiscal year.

77 (c) The acreage for each property and the county where
78 each property is located.

79 Section 2. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 265**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: State Resources Council
2 Representative Brown offered the following:

3
4 **Amendment**

5 Remove lines 52-53 and insert:

6 (5) Any state agency or water management district that
7 owns or manages lands shall assist and coordinate and cooperate
8
9

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 265**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: State Resources Council

2 Representative Brown offered the following:

3
4 **Amendment**

5 Remove line 51 and insert:

6 hunting land. Replacement lands shall, to the greatest extent
7 possible, be located within the same administrative region of
8 the Commission and shall be consistent with the hunting
9 discipline that the Commission allowed on the closed land.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 265**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: State Resources Council

2 Representative Brown offered the following:

3
4 **Amendment**

5 Remove line 78 and insert:

6 each property is located, except for right-of-way lands and
7 parcels under 50 acres.
8
9

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1031 CS

Pawnbroking

SPONSOR(S): Kyle

TIED BILLS:

IDEN./SIM. BILLS: SB 1870

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	6 Y, 0 N, w/CS	Reese	Reese
2) Finance & Tax Committee	8 Y, 0 N	Rice	Diez-Arguelles
3) State Resources Council		Reese <i>AR</i>	Hamby <i>726</i>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, the cities of Miami and Fort Lauderdale have a \$1.50 transaction fee that is assessed by ordinance against all pawn transactions. Although not prohibited, this fee is not explicitly authorized in the Florida Pawnbroking Act.

The bill amends the Florida Pawnbroking Act (act) to prohibit local governments, counties or municipalities, from enacting ordinances requiring the payment of any fee related to a pawn transaction or purchase unless authorized in current law.

The bill will reduce the revenues of Miami and Fort Lauderdale.

This bill may be a mandate requiring a two-thirds vote of each house.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill limits the types of ordinances that local governments can enact regarding pawnbroking.

Ensure lower taxes – The bill prohibits local government ordinances requiring fees or taxes that are not explicitly authorized in the Florida Pawnbroking Act.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Legislature created Chapter 539, F.S., in 1996 to outline the provisions of the Florida Pawnbroking Act (act). The act provides for state licensure of pawnbrokers through the Department of Agriculture and Consumer Services and regulation by the local sheriffs or police department.

Pawnbrokers are stringently regulated and as such are required to keep records of all transactions. As outlined under s. 539.001(9), F.S., pawnbrokers are required to maintain a copy of each completed pawnbroker transaction form on the pawnshop premises for one year after the date of transaction. Also, on or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original pawnbroker transaction forms for each of the transactions occurring during the previous business day.

Pawnbrokers are subject to any applicable local occupational license taxes and are obligated to collect and remit sales taxes including any local discretionary sales taxes on sales transactions.

Transaction Fee Ordinance

Both Miami (in 1996) and Fort Lauderdale (in 2004) have enacted local ordinances assessing a transaction fee of \$1.50 on every pawn loan and purchase in those municipalities. The charge was imposed to cover the cost of police inspections and the processing of transaction forms.

Following adoption of the ordinance, some pawnbrokers in Miami sued the city, and the trial court declared the city's pawnshop fees unconstitutional, finding them to be a tax, and not, as contended by the city, user fees. The third district court of appeals reversed this decision reaffirming that a fee imposed by the city to cover the cost of law enforcement services to pawn shops is a valid user fee and not an unconstitutional tax.¹

A pawn transaction fee ordinance was recently proposed in the city of Ocala. The city, however, did not enact the ordinance.

Current law does not explicitly prohibit the enactment of an ordinance imposing a fee on pawnbroker transactions, it only requires that any ordinances enacted be in compliance with the Florida Pawnbroking Act.

Effect of Bill

The bill prohibits counties and municipalities from enacting local ordinances requiring the payment of any fee related to a pawn transaction or purchase unless explicitly authorized under the Florida Pawnbroking Act.

¹ City of Miami v. Quik Cash Jewelry and Pawn Inc., 811 So.2d 756 (FL 3 DCA 2002)

C. SECTION DIRECTORY:

Section 1. Amends s. 539.001, F.S., relating to the Florida Pawnbroking Act, restricting the authority of counties and municipalities to enforce a fee or tax.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The revenues of the cities of Miami and Ft. Lauderdale will be reduced.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

For local FY 2004-2005, the City of Fort Lauderdale reported having charged \$82,446 in transaction fees and has received \$52,824 in transaction fee payments. Miami did not respond to the survey.²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the revenue raising authority of cities and counties. While only two cities currently levy this fee, all cities and counties have authority to levy this fee. Therefore, this authority appears to be significant. No mandate exemptions apply. Therefore, the bill may be a mandate requiring a two-thirds vote majority of each house.

B. RULE-MAKING AUTHORITY:

None

² Survey conducted by Legislative Committee on Intergovernmental Relations
STORAGE NAME: h1031d.SRC.doc
DATE: 4/3/2006

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Committee on Agriculture adopted one amendment to the bill. The amendment clarified that local ordinances are not permitted to require payment of any fee or tax related to any pawn transaction including purchases.

HB 1031

2006
CS

CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to pawnbroking; amending s. 539.001, F.S.; providing that local ordinances shall not require the payment of any fee or tax related to a pawn transaction or purchase unless authorized under the Florida Pawnbroking Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (20) of section 539.001, Florida Statutes, is amended to read:

539.001 The Florida Pawnbroking Act.--

(20) CONFLICTING ORDINANCES.--Any county or municipality may enact ordinances that are in compliance with, but not more restrictive than this section, except that local ordinances shall may not require the payment of any fee or tax related to a pawn transaction or purchase unless authorized under this chapter or restrict hours of operations other than between

HB 1031

2006
CS

24 | midnight and 6 a.m. Any ordinance that conflicts with this
25 | subsection is void. ~~Nothing in~~ This section does not ~~shall~~
26 | affect the authority of a county or municipality to establish
27 | land use controls or require a pawnbroker to obtain a local
28 | occupational license.

29 | Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HCB 6003 (PHCB CRJU 06-01)

(HBs 515 & 589) Resale of Tickets

SPONSOR(S): Stargel, Llorente, and others

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	6 Y, 1 N	Cunningham	Kramer
1) Agriculture Committee	9 Y, 0 N	Blanchette	Reese
2) State Resources Council		Blanchette <i>CB</i>	Hamby <i>720</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, s. 817.36, F.S., states that it is a second degree misdemeanor for anyone to offer for sale or sell tickets "for admission to any sporting exhibition, athletic contest, theater, or any exhibition where an admission price is charged" for a price in excess of \$1 over the original retail price charged by the original seller.

This House Combined Bill adds "theme, amusement, or recreation park or entertainment complex" tickets to the above list, and increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller.

The bill provides an exception to the criminal penalty for tickets resold *at any price* so long as the resale is authorized by the ticket's original seller.

The bill also provides an exception to the criminal penalty for non-park tickets resold *at any price*, so long as the resale is made through an Internet website and the website operator makes and posts certain guarantees and disclosures to which a prospective purchaser is directed before completing the resale transaction. The bill defines "non-park ticket."

The bill further provides that sales tax for resales of admissions tickets must be submitted to the Department of Revenue in accordance with s. 212.04, F.S.

In short, this bill would allow *any person* to:

- Resell an admission ticket at an amount that is up to 25% more than the original retail price charged by the original seller;
- Resell an admission ticket *at any price* so long as the resale is authorized by the ticket's original seller;
- Resell a non-park ticket *at any price* through an Internet website where the website operator makes certain guarantees and disclosures.

This bill does not appear to have a significant fiscal impact.

This bill takes effect July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: hc6003c.SRC.doc

DATE: 3/31/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → The bill increases the amount above retail price for which specified tickets may be resold without committing a second degree misdemeanor.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Ticket scalping is generally defined as the "reselling of tickets at a price higher than the established value."¹ Legislation limiting or prohibiting ticket scalping has been criticized as limiting free enterprise. Commentators argue that once a person purchases a ticket, that person should be able to resell the ticket at any price.² Further, it has been argued that ticket scalping provides a service to those who are not willing to purchase tickets directly from the promoter.³ A contrary view is that ticket scalping limits the number of reasonably priced tickets because professional ticket scalpers purchase such a large number of the tickets from the promoter and limit the ability of the public to purchase tickets at retail prices.⁴ Further, ticket scalping can lead to the sale of fraudulent tickets.⁵

There are no federal laws directly governing ticket resales, but several states prohibit the reselling of tickets for an amount in excess of the face price.⁶ At least sixteen states prohibit or regulate the resale of tickets: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Rhode Island and Wisconsin.⁷ Regulatory schemes include allowing resales for no more than face value, permitting resales for higher prices by licensed ticket brokers, or allowing resales for a specified amount above face value.⁸

Section 817.36, Florida Statutes

Section 817.36, F.S., (Florida's "ticket scalping statute") was passed in 1945. Although there is no express legislative intent in the statute to explain why the statute was enacted, the Fifth District Court of Appeal discussed the purpose of the "ticket scalping" statute in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

We think the statute attempts to regulate areas of legitimate state concern—public events and tourism. Its obvious goal is to protect the consuming public and event promoters from the economic harm done to them by persons who artificially corner the market for tickets to public events. By making an exception for sellers of travel, it seeks to promote tourism, and regulate the travel industry. Similar statutes in other states have been upheld by the state courts... [T]icket scalpers deprive consumers of a valuable service--the availability of low-cost tickets through box office sources. The effect on the ticket market by scalpers who buy up available tickets for resale is to lessen public opportunity to buy

¹ Paul J. Criscuolo, *Reassessing the Ticket Scalping Dispute: The Application, Effects, and Criticisms of Current Anti-Scalping Legislation*, Seton Hall Journal of Sport Law, 5 SHJSL 189, 189 (1995).

² *Id.* at 189-90.

³ *Id.* at 191.

⁴ *Id.* at 192.

⁵ *Id.* at 192.

⁶ <http://www.ncsl.org/programs/lis/ticketscalplaws.htm>.

⁷ *Id.*

⁸ *Id.*

tickets at the lowest prices. Statutes like section 817.36 are designed to prevent unfair cornering of the market and limit opportunities to manipulate prices, both of which damage the general public and the promoters of public events.⁹

Currently, s. 817.36, F.S., states, in part, that it is a second degree misdemeanor¹⁰ for anyone to offer for sale or sell tickets for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged for a price in excess of \$1 over the original retail price charged by the original seller. The prohibition applies to travel agencies unless they are registered sellers of travel pursuant to part XI of chapter 559, F.S., resell such tickets as part of travel packages, and are reselling such tickets on behalf of the original sellers.¹¹

Effect of the Bill

As noted above, current law provides that it is a second degree misdemeanor for anyone to offer for sale or sell tickets for admission to sporting exhibitions, athletic contests, theaters, or any exhibition where an admission price is charged. The bill adds "theme, amusement, or recreation park" tickets and tickets to "entertainment complexes" to the above list, and increases the maximum amount above retail price for which such tickets may be resold from \$1 above the retail price charged by the original seller to 25% above the retail price charged by the original seller.

The bill provides an exception to the criminal penalty for tickets resold *at any price* so long as the resale is authorized by the ticket's original seller.

The bill also provides an exception to the criminal penalty for non-park tickets resold *at any price*, so long as the resale is made through an Internet website and the website operator makes and posts the following guarantees and disclosures to which a prospective purchaser is directed before completing the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket if:
 - a. The ticketed event is cancelled;
 - b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or
 - c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantee made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.
2. The website operator discloses through Internet web pages on which are visibly posted text, or links to web pages on which are posted text that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than its original value.

The bill clarifies that refunds must include servicing, handling, or processing fees unless such fees are declared non-refundable under the terms of the guarantee. "Non-park ticket" is defined by the bill as a ticket that is not for admission to a theme, amusement, or recreation park or entertainment complex or to a permanent exhibition or recreational activity within such a park or complex.

⁹ *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997).

¹⁰ A second degree misdemeanor is punishable by a maximum of 60 days in jail and a maximum fine of \$500. See ss. 775.082, 775.083, F.S.

¹¹ See s. 817.36(2)(b), F.S. The exemption for registered sellers of travelers was challenged on due process and equal protection ground in *State v. Sobieck*, 701 So.2d 96, 104 (Fla. 5th DCA 1997). However, the court looked to the extensive requirements placed upon registered sellers of travel (e.g. they must be bonded and financially answerable to travelers injured by fraud, register annually with the state, provided extensive information concerning their business operations and agents, pay registration fees, keep records, etc...) and held that such heightened duties and responsibilities provided a legitimate basis for allowing them to sell tickets in a manner different from that allowed to the general public.

The bill further provides that sales tax for resales of admissions tickets must be submitted to the Department of Revenue in accordance with s. 212.04, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 817.36, F.S., increasing the maximum amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for resale of tickets authorized by the original seller; providing an exception to the criminal penalty for resale of certain tickets through an Internet website in specified circumstances; providing for sales tax collection on ticket resales.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private individuals may profit in that they will now be able to re-sell certain tickets at a price that is 25% more than the ticket's retail admission price. This could lead to the creation of businesses that resell tickets. Private individuals may also profit in that certain tickets may be resold *at any price* in certain circumstances.

D. FISCAL COMMENTS:

In 2004, the Office of the State Court Administrator reported that only 145 cases were filed for violations of s. 817.36, F.S.¹² The bill would likely reduce the number of filings under the statute and allow judges, prosecutors, and public defenders to devote time and resources to other cases.

¹² The information on filings came from the clerks of the courts in every Florida county except for Brevard, Nassau, St. Lucie, and Seminole.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, s. 509.013, F.S., defines "theme park or entertainment complex" as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually. The terms, "amusement or recreation park" are not defined by the bill or by statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

HC6 6003 (for HBs 515, 589)

2006

A bill to be entitled

An act relating to resale of tickets; amending s. 817.36, F.S.; increasing the maximum amount above retail price for which specified tickets may be resold without violating statute; providing an exception to the criminal penalty for resale of tickets authorized by the original seller; providing an exception to the criminal penalty for resale of certain tickets through an Internet website in specified circumstances; providing for sales tax collection on ticket resales; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 817.36, Florida Statutes, is amended to read:

817.36 Resale of tickets of common carriers, places of amusement, etc.--

(2)(a) Whoever shall resell or offer for resale ~~sale or sell~~ any ticket good for admission to any sporting exhibition, athletic contest, theater, or other any exhibition, or to any theme, amusement, or recreation park or entertainment complex where an admission price is charged and request or receive a price in excess of 25 percent ~~\$1~~ above the retail admission price charged therefor by the original seller of the said ticket ~~commits shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

HCB 6003 (for HBs 515, 589)

2006

(b) The provisions of paragraph (a) shall not prohibit the resale or offer for resale of a ticket, at any price, if such resale or offer is authorized by the ticket's original seller.

(c) The provisions of paragraph (a) also shall not prohibit the resale or offer for resale of a non-park ticket, at any price, if such resale or offer is made through an Internet website and the website operator makes and posts the following guarantees and disclosures through Internet web pages on which are visibly posted text, or links to web pages on which are posted text, to which a prospective purchaser is directed before completion of the resale transaction:

1. The website operator guarantees a full refund of the amount paid for the ticket if:

a. The ticketed event is canceled;

b. The purchaser is denied admission to the ticketed event, unless such denial is due to the action or omission of the purchaser; or

c. The ticket is not delivered to the purchaser in the manner requested and pursuant to any delivery guarantees made by the reseller and such failure results in the purchaser's inability to attend the ticketed event.

2. The website operator discloses that it is not the issuer, original seller, or reseller of the ticket or items and does not control the pricing of the ticket or items, which may be resold for more than their original value.

A refund under subparagraph 1. shall include any servicing, handling, or processing fees unless such fees are declared

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55 nonrefundable under the terms of the guarantee. For purposes of
56 this paragraph, the term "non-park ticket" means a ticket that is
57 not for admission to a theme, amusement, or recreation park or
58 entertainment complex or to a permanent exhibition or
59 recreational activity within such a park or complex.

60 ~~(d)(b)~~ The provisions of paragraph (a) ~~this subsection~~
61 shall apply to travel agencies that have an established place of
62 business in this state, which place of business is required to
63 pay state, county, and city occupational license taxes, unless
64 such agencies are registered sellers of travel pursuant to part
65 XI of chapter 559 and adhere to the restriction of selling said
66 tickets as part of the travel packages specified in that part,
67 and such travel agencies are reselling said tickets on behalf of
68 the original sellers of said tickets. When any original seller
69 of tickets provides a travel agency with tickets in bulk, the
70 travel agent shall be deemed to be reselling the tickets on
71 behalf of the original seller.

72 ~~(e)~~ Any sales tax due for resales under this subsection
73 shall be remitted to the Department of Revenue in accordance
74 with s. 212.04.

75 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7175 PCB ENVR 06-06 Derelict Vessels
 SPONSOR(S): Environmental Regulation Committee
 TIED BILLS: IDEN./SIM. BILLS: SB 2128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	7 Y, 0 N, w/CS	Perkins	Kliner
1) State Resources Council		Perkins <i>RP</i>	Hamby <i>220</i>
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill, relating to vessels, provides:

- Funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities, and derelict vessel removal.
- Authorization to marina owner or employee to take steps and charge reasonable fees to secure a vessel in a marina after the issuance of a tropical storm or hurricane watch has been issued and requires marina owners to give contractual notice of such authority.
- Local regulation of anchoring within mooring fields.
- Direction to the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.
- For the distribution of vessel registration fees to counties and specifies the utilization of such funds relating to boat access.
- Grant program funding for the removal of derelict vessels to local governments.
- Direction to Florida Fish and Wildlife Conservation Commission (FWCC) to implement a plan to seek federal disaster funds relating to the removal of derelict vessels.
- For derelict vessels removal and authorization of such removal extended to all law enforcement officers.
- Exemption for certain floating vessel structures from environmental resource permitting.
- For a conforming amendment relating to the definition of derelict vessel as defined in statute and to provide technical changes.
- Provisions relating to abandoned and derelict vessels and the removal of such vessels, penalties for nonremoval of such vessels, and removal provisions for derelict vessels located on private property.

The bill does not appear to have a significant impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill provides local regulation of anchoring within mooring fields. The bill clarifies the definition of "derelict vessel" and allows derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Safeguard Individual Liberty: The bill authorizes marina personnel to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill authorizes local regulation of anchoring within mooring fields. The bill clarifies the definition of "derelict vessel" and allows derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Promote Personal Responsibility: The bill authorizes marina personnel to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill increases personal accountability to vessel owners to secure their vessels from marinas before the onset of a tropical storm or hurricane.

Maintain Public Security: The bill authorizes marinas to secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The bill allows all law enforcement officers charged with enforcement of Florida's boating laws under section 327.70, F.S., to enforce the provisions pertaining to derelict and abandoned vessels and allows their agencies to recover the costs associated with removing these vessels.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

State Game Trust Fund

Section 206.606(1)(b), F.S., provides the State Game Trust Fund in the FWCC with \$2.5 million each fiscal year from state taxes imposed on motor fuel to be used for recreational boating activities and freshwater fisheries management and research. A minimum of \$1.25 million is directed to be utilized to fund local projects that provide recreational channel marking, public launching facilities, aquatic plant control, and other local boating activities.¹

Vessel Securement During A Storm

Hurricanes can cause catastrophic damage to marinas and vessels. During a storm event, changes in wind direction and fluctuations in wind intensity, excessive rain and storm surge cause moored vessels to repeatedly collide with stationary docks, and often culminate in extensive damage assessments which may evolve into a dispute between the vessel owner and the marina owner. The dispute often hinges on whether the vessel caused damage to the dock, or whether the dock caused damage to the vessel during the storm.

Florida law emphasizes the protection of life over property by prohibiting marinas from requiring vessel owners to remove their vessels from a marina once a hurricane watch or warning has been issued.² A

¹ s. 206.606(1)(b)(1), F.S.

² s. 327.59, F.S.

hurricane watch is posted when hurricane conditions are possible within 36 hours and a *hurricane warning* is posted when hurricane conditions are expected within 24 hours. A *tropical storm watch* is posted when tropical storm conditions are expected within 36 hours.

In 1995, the aforementioned law, was challenged by a marina owner in circuit court and the case was dismissed. A subsequent appeal of the case upheld the lower court's dismissal (Burklow & Associates v. Belcher, 719 So.2d 31(1stDCA, 1995)). In that case, the marina owner sued the owners of sixteen vessels stored at the marina for breach of contract and negligence, seeking to recover damages allegedly caused by the vessel owners' failure to move their vessels from the marina before a hurricane had moved ashore. The Circuit Court dismissed the complaint and the marina owner appealed. The District Court of Appeal upheld the dismissal and found the following:

- The marina owner's complaint was within admiralty jurisdiction and that federal maritime law applied;
- Federal maritime law did not preempt section 327. 59, F.S., therefore marinas may not adopt, maintain, or enforce evacuation policies requiring vessels to be removed from marinas following the issuance of a hurricane watch or warning; and
- Vessel owners had no duty to remove their vessels upon the request of the marina owner in the period prior the issuance of a hurricane watch or warning.

In the Burklow case, the District Court of Appeal further stated that an owner of a vessel which is lawfully docked at a marina, under a valid slip lease agreement that does not require the removal of a vessel in the event of a hurricane threat, does not owe a duty to the marina owner to remove his or her vessel upon the request of the marina owner during the period prior to the issuance of any hurricane watch or warning. The court stated that requiring such a duty was not logical given the insufficient probability, at any time prior to the issuance of an official hurricane watch or warning, of a hurricane causing a vessel owner's vessel to damage a marina. The court further stated that vessel owners whose vessels were stored at a marina did owe a duty to the marina owner to exercise reasonable care for the protection of the marina property, but that duty did not include any obligation to remove their vessel upon the request of the marina owner.

Vessel Mooring Field Regulation

Section 327.60 (2), F.S., prohibits local governments from regulating the anchoring of non-live aboard vessels in the exercise of rights of navigation. Public rights on navigable waters are not restricted to navigation in the strict sense, but include such incidental rights as are necessary to render the right of navigation as reasonably available. The incidental rights include the right of a vessel to anchor so long as it does not unreasonably obstruct navigation. If it is a live-aboard vessel or floating structure, cities and counties can regulate their anchoring and mooring up to a flat prohibition.

Section 327.02(15), F.S., defines "Live-aboard vessel" to mean:

- (a) Any vessel used solely as a residence; or
- (b) Any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence.

A commercial fishing boat is expressly excluded from the term "live-aboard vessel."

Vessel Owner Notification Requirements

Section 328.64, F.S., requires a vessel owner to the notify the Department of Highway Safety and Motor Vehicles when a vessel owner transfers all or any part of their interest in a vessel registered or titled in Florida.

Vessel Registration Fee Distribution

Section 328.72(15), F.S., provides for the distribution of vessel registration fees to be returned to the appropriate county for the sole purposes of providing recreational channel marking and public launching facilities and other boating-related activities, for removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with marine sanitation, and for

manatee and marine mammal protection and recovery. Counties are required to provide an annual detailed report to the FWCC no later than November 1 of each year that a portion of the registration fees were spent on boating infrastructure. The commission has the authority to provide an exemption letter by December 15 of each year for qualifying counties.

Florida Coastal Protection Trust Fund

The Florida Coastal Protection Trust Fund, section 376.11, F.S., establishes a mechanism to have financial resources currently available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages. Money in the fund may be used to fund a grant to coastal local governments for the removal of derelict vessels from public waters of the state.

Derelict Vessel Removal From Public Waters

Section 376.11, F.S., established the Derelict Vessel Removal Program in 1980 which is currently operated by the FWCC. The program is a financial assistance grant program, providing funds to coastal local governments for the reimbursement of the removal of derelict vessels from coastal waters of the state. Funding for the program is appropriated by the Legislature each fiscal year.

Sections 376.15 and 823.11, F. S., authorizes FWCC only to remove derelict vessels from waters of the state. City police departments and county sheriffs' departments are authorized to enforce all of Florida's laws pertaining to vessels and have the authority to arrest the owner for allowing the vessel to become or remain derelict. Currently, cities and counties wanting to remove derelicts must petition the FWCC for the delegation of authority to cause such removals. This restriction produces substantial delays in the removal of these vessels. The delays, in turn, increase the costs of removal as the derelicts continue to deteriorate.

Currently, FWCC reports there are 841 reported derelict vessel cases in Florida. This number may be low since all derelict vessels are not reported. Derelict vessels may pose navigational and environmental hazards. According to FWCC, some vessels become depository for hazardous materials and pose a safety and health threat to users of public waterways and the state's natural resources.

The FWCC has the authority to manage a grant program to assist counties with the removal of derelict vessels; however, the program has not been funded since 2002. The lack of funding for the removal of derelict vessels has forced local governments to utilize their own funds to remove such vessels or leave them in place. In meetings with the FWCC, some local governments have asked that their local officers be given the authority to declare vessels derelict, which would allow these governments to handle derelict vessels problems locally.

Floating Vessel Platforms or Floating Boat Lifts

Paragraph (s) of subsection (2) of s. 403.813, F.S., provides that a permit is not required for a floating vessel platform or floating boat lift if such structures:

- Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;
- Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or, when associated with a dock that is exempt under s. 403.812(2), F.S., or a permitted dock with no defined boat slip, do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water;
- Are not used for commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners;
- Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where no sea grasses exist if such areas are present and adjacent to the dock; and

- Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of ch. 373, F.S., or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and are not subject to any more stringent regulation by any local government. The Department of Environmental Protection is required to adopt a general permit, by rule, for those floating vessel platforms which do not qualify for the exemption, but do not cause significant adverse impacts to occur individually or cumulatively. The general permit constitutes permission to use or occupy lands owned by the Board of Trustees. No local government may impose a more stringent regulation on floating vessel platforms covered by the general permit.

Abandoned Property

Section 705.101, F.S., defines abandoned property as all tangible property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. Section 705.103(4), F.S., establishes procedures relating to abandoned property.

Effect of Proposed Change

State Game Trust Fund

The bill amends section 206.606, F.S., to direct funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities and derelict vessel removal. The bill deletes reference to aquatic plant control projects from receiving funding under this section and deletes reference to repealed Florida Administrative Code (Rules 62D-5.031 – 62D5.036). Aquatic plant control is performed by the Department of Environmental Protection.

Vessel Securement During A Storm

The bill authorizes marina personnel to take reasonable actions to further secure any vessel within the marina to minimize damage to the vessel, the marina property, private property and the environment, if the vessel is not removed once a tropical storm or hurricane watch has been issued. The marinas may charge reasonable fees for securing the vessel and held harmless for any damage that occurs as a result of securing the vessel or from any damage incurred to a vessel from such storms or hurricanes. The bill provides that no immunity is granted to the marina for any intentional acts or negligence that causes damage to the vessel during the removal or storage under this act. The bill provides noticing criteria in the contractual agreement which may be utilized by the marina and the vessel owner relating to the removal of the vessel once a tropical storm or hurricane watch has been issued and provides that a time frame be established for such vessel removal.

Vessel Mooring Field Regulation

The bill amends section 327.60(2), F.S., to allow local regulation of anchoring within mooring fields.

Vessel Owner Notification Requirements

Section 328.64(1), F.S., is amended to direct the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.

Vessel Registration Fee Distribution

The bill amends section 328.72(15), F. S., which provide for the distribution of vessel registration fees to counties. The bill provides for the distribution of such moneys to be returned to the counties for the express purposes of providing recreational channel marking and other uniform waterway markers, public boat ramps, lifts and hosts, marine railways, and other public boat launching facilities, derelict vessel removal and removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with marine sanitation. The bill amends the requirement for an annual report to the FWCC from the counties regarding their expenditures boat registration fees. The bill

further provides that if the annual report is not submitted by January 1 of each calendar year, the tax collector of that county shall not distribute the moneys designated for use by the counties, but shall instead for the next calendar year remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The FWCC shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

Florida Coastal Protection Trust Fund

The bill amends section 376.11, F.S., to allow derelict vessel removal grants to be awarded to all local governments as opposed to just coastal local governments.

Derelict Vessel Removal From Public Waters

The bill amends section 376.15, F.S., pertaining to derelict and abandoned vessels to conform the definition of derelict vessel in section 823.11, F.S. The bill allows all law enforcement officers charged with enforcement of Florida's boating laws under section 327.70, F.S., to enforce the provisions pertaining to derelict and abandoned vessels and allows their agencies to recover the costs associated with removing these vessels.

The bill amends the definition of derelict vessel in section 823.11, F.S., to mean any vessel, as defined in section 327.02, F.S., that is left, stored, or abandoned:

- (a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state; or
- (b) At any port in this state without the consent of the agency having jurisdiction thereof; or
- (c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

The bill provides that it is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel within this state. The bill specifies which officers may remove such vessels and provides for funding of such removal by certain grants. The bill directs FWCC to implement a plan to seek federal disaster funds relating to the removal of derelict vessels. The bill deletes a provision authorizing the FWCC to delegate authority for derelict vessel removal to local governments.

The bill provides that when a derelict vessel is docked or grounded at or beached upon the private property of another without the consent of the owner of the property, the owner of the property may remove the vessel at the vessel owner's expense 60 days after compliance with certain notice requirements. The bill specifies that any person, firm, or corporation violating this act commits a misdemeanor of the first degree and shall be punished as provided by law. The court having jurisdiction over the criminal offense is authorized to impose civil penalties in addition to any sentence imposed for the criminal offense.

Floating Vessel Platforms or Floating Boat Lifts

The bill amends section 403.813(2)(s), F.S., to provide that the exemption for floating vessel platforms includes those that are associated with a permitted dock with no defined boat slip or are attached to a bulkhead on a parcel of land where there is no other docking structure and which do not exceed a combined total of 500 square feet or 200 square feet in Outstanding Florida Water. The bill requires all floating vessel platforms to be located where sea grasses adjacent to the dock or bulkhead are least dense. The bill provides that exempt floating vessel platforms are not subject to any permitting requirement, registration requirement, or other more stringent regulation by any local government.

Abandoned Property

The bill amends section 705.101(3), F.S., to provide for a conforming amendment relating to the definition of derelict vessel as defined in section 823.11(1), F.S. The bill amends section 705.103(4), F.S., to provide a conforming amendment relating to vessels.

C. SECTION DIRECTORY:

- Section 1 Amends s. 206.606, F.S., to provide funding for local projects regarding uniform waterway markers, boat ramps, boat lifts and hoists, marine railways, public boat launching facilities and derelict vessel removal.
- Section 2 Amends s. 327.59, F.S., to allow an authorized employee to take steps and charge reasonable fees to secure a vessel in a marina after the issuance of a tropical storm or hurricane watch has been issued and requires marina owners to give contractual notice of such authority.
- Section 3 Amends s. 327.60(2), F.S., to allow local regulation of anchoring within mooring fields.
- Section 4 Amends s. 328.64, F.S., to provide direction to the Department of Highway Safety and Motor Vehicles to provide forms for giving notification concerning change of interest and address of the vessel owner.
- Section 5 Amends s. 328.72(15), F.S., provides for the distribution of vessel registration fees to counties and specifies the utilization of such funds relating to boat access.
- Section 6 Amends s. 376.11(4)(g), F.S., to extend grant program funding for the removal of derelict vessels to local governments.
- Section 7 Amends s. 376.15, F.S., relating to derelict vessels removal and authorization of such removal extended to all law enforcement officers.
- Section 8 Amends s. 403.813(2)(s), F.S., to exempt certain floating vessel structures from environmental resource permitting.
- Section 9 Amends s. 705.101(3), F.S., to provide for a conforming amendment relating to the definition of derelict vessel as defined in section 823.11(1), F.S.
- Section 10 Amends s. 705.103(4), F.S., to provide technical change for clarification relating to vessels.
- Section 11 Amends s. 823.11, F.S., to revise provisions relating to abandoned and derelict vessels and the removal of such vessels; to provide penalties for nonremoval of such vessels; and to provide removal provisions for derelict vessels located on private property.
- Section 12 Provides the act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

State government may experience a cost savings as a result of expediting the removal of derelict vessels.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill extends disbursement of grant funds dedicated to cleanup and removal of derelict vessels to all local governments.

2. Expenditures:

Authorized local law enforcement officers are authorized to remove any abandoned or derelict vessels. The bill provides that removal costs are recoverable against the vessel owner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The vessel owner who fails to remove its vessel from the marina after a tropical storm or hurricane watch has been issued may incur an expense imposed by the marina to remove such vessel.

The exemption for floating vessel platforms is expanded to allow those platforms attached to a bulkhead or a parcel of land where no other docking structures exist and may allow for more floating vessel platforms to qualify for a permit exemption.

D. FISCAL COMMENTS:

The bill amends the requirement for an annual report to the FWCC from the counties regarding their expenditures of the boat registration fees. The bill provides that if the annual report is not submitted by January 1 of each calendar year, the tax collector of that county shall not distribute the moneys designated for use by the counties, but shall instead for the next calendar year remit such moneys to the state for deposit into the Marine Resources Conservation Trust Fund. The FWCC shall return those moneys to the county if the county fully complies with this section within that calendar year. If the county does not fully comply within that calendar year, the moneys shall remain within the Marine Resources Trust Fund and may be appropriated for the purposes specified in this subsection.

FWCC reports the fiscal impact of this legislation to be negligible.³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Environmental Regulation Committee favorably adopted two amendments to PCB 06-06:

- Amendment No. 1 – directs FWCC to implement a plan to seek federal disaster funds relating to the removal of derelict vessels.
- Amendment No. 2 – replaces the word “feasible” with “reasonable.”

The analysis has been amended to reflect the adoption of these amendments.

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1 A bill to be entitled

2 An act relating to vessels; amending s. 206.606, F.S.;

3 authorizing the use of certain funds for local boating

4 related projects and activities; amending s. 327.59, F.S.;

5 authorizing marina owners, operators, employees, and

6 agents to take actions to secure vessels during severe

7 weather and to charge fees and be held harmless for such

8 service; holding marina operators, employees, and agents

9 liable for damage caused by intentional acts or negligence

10 while removing or securing vessels; authorizing contract

11 provisions and notice relating to removing or securing

12 vessels; amending s. 327.60, F.S.; providing for local

13 regulation of anchoring within mooring fields; amending s.

14 328.64, F.S.; requiring the Department of Highway Safety

15 and Motor Vehicles to provide forms for certain

16 notification related to vessels; requiring the department

17 to provide by rule for the surrender and replacement of

18 certificates of registration to reflect change of address;

19 amending s. 328.72, F.S.; requiring counties to use funds

20 for specific boating related purposes; requiring counties

21 to provide reports demonstrating specified expenditure of

22 such funds; providing penalties for failure to comply;

23 amending s. 376.11, F.S.; authorizing the distribution of

24 revenues from the Florida Coastal Protection Trust Fund to

25 all local governments for the removal of certain vessels;

26 amending s. 376.15, F.S.; revising provisions relating to

27 the removal of abandoned and derelict vessels; specifying

28 officers authorized to remove such vessels; providing that

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29 certain costs are recoverable; requiring the Department of
 30 Legal Affairs to represent the Fish and Wildlife
 31 Conservation Commission in certain actions; expanding
 32 eligibility for disbursement of grant funds for the
 33 removal of certain vessels; amending s. 403.813, F.S.;
 34 providing exemptions from permitting, registration, and
 35 regulation of floating vessel platforms or floating boat
 36 lifts by a local government; amending s. 705.101, F.S.;
 37 revising the definition of "abandoned property" to include
 38 certain vessels; amending s. 705.103, F.S.; revising the
 39 terminology relating to abandoned or lost property to
 40 conform; amending s. 823.11, F.S.; revising provisions
 41 relating to abandoned and derelict vessels and the removal
 42 of such vessels; providing a definition of "derelict
 43 vessel"; specifying which officers may remove such
 44 vessels; directing the Fish and Wildlife Conservation
 45 Commission to implement a plan for the procurement of
 46 federal disaster funds for the removal of derelict
 47 vessels; requiring the Department of Legal Affairs to
 48 represent the commission in certain actions; deleting a
 49 provision authorizing the commission to delegate certain
 50 authority to local governments under certain
 51 circumstances; authorizing private property owners to
 52 remove certain vessels with required notice; providing
 53 that cost of such removal is recoverable; prohibiting
 54 private property owners from hindering the removal of
 55 certain vessels by vessel owners or agents; providing for
 56 jurisdictional imposition of civil penalties for

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violations relating to certain vessels; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 206.606, Florida Statutes, is amended to read:

206.606 Distribution of certain proceeds.--

(1) Moneys collected pursuant to ss. 206.41(1)(g) and 206.87(1)(e) shall be deposited in the Fuel Tax Collection Trust Fund. Such moneys, after deducting the service charges imposed by s. 215.20, the refunds granted pursuant to s. 206.41, and the administrative costs incurred by the department in collecting, administering, enforcing, and distributing the tax, which administrative costs may not exceed 2 percent of collections, shall be distributed monthly to the State Transportation Trust Fund, except that:

(b) \$2.5 million shall be transferred to the State Game Trust Fund in the Fish and Wildlife Conservation Commission in each fiscal year and used for recreational boating activities, and freshwater fisheries management and research. The transfers must be made in equal monthly amounts beginning on July 1 of each fiscal year. The commission shall annually determine where unmet needs exist for boating-related activities, and may fund such activities in counties where, due to the number of vessel registrations, sufficient financial resources are unavailable.

1. A minimum of \$1.25 million shall be used to fund local projects to provide recreational channel marking and other

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uniform waterway markers, public boat ramps, lifts, and hoists,
marine railways, and other, public launching facilities,
derelict vessel removal aquatic plant control, and other local
boating related activities. In funding the projects, the
commission shall give priority consideration as follows:

a. Unmet needs in counties with populations of 100,000 or
less.

b. Unmet needs in coastal counties with a high level of
boating related activities from individuals residing in other
counties.

2. The remaining \$1.25 million may be used for
recreational boating activities and freshwater fisheries
management and research.

3. The commission is authorized to adopt rules pursuant to
ss. 120.536(1) and 120.54 to implement a Florida Boating
Improvement Program ~~similar to the program administered by the~~
~~Department of Environmental Protection and established in rules~~
~~62D-5.031 — 62D-5.036, Florida Administrative Code, to determine~~
~~projects eligible for funding under this subsection.~~

On February 1 of each year, the commission shall file an annual
report with the President of the Senate and the Speaker of the
House of Representatives outlining the status of its Florida
Boating Improvement Program, including the projects funded, and
a list of counties whose needs are unmet due to insufficient
financial resources from vessel registration fees.

Section 2. Section 327.59, Florida Statutes, is amended to
read:

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113 327.59 Marina evacuations.--

114 (1) After June 1, 1994, marinas may not adopt, maintain,
115 or enforce policies pertaining to evacuation of vessels which
116 require vessels to be removed from marinas following the
117 issuance of a hurricane watch or warning, in order to ensure
118 that protecting the lives and safety of vessel owners is placed
119 before interests of protecting property.

120 (2) Nothing in this section may be construed to restrict
121 the ability of an owner of a vessel or the owner's authorized
122 representative to remove a vessel voluntarily from a marina at
123 any time or to restrict a marina owner from dictating the kind
124 of cleats, ropes, fenders, and other measures that must be used
125 on vessels as a condition of use of a marina. After a tropical
126 storm or hurricane watch has been issued, a marina owner or
127 operator, or an employee or agent of such owner or operator, may
128 take reasonable actions to further secure any vessel within the
129 marina to minimize damage to a vessel and to protect marina
130 property, private property, and the environment and may charge a
131 reasonable fee for such services.

132 (3) Notwithstanding any other provisions of this section,
133 in order to minimize damage to a vessel and to protect marina
134 property, private property, and the environment, a marina owner
135 may provide by contract that in the event a vessel owner fails
136 to promptly remove a vessel from a marina after a tropical storm
137 or hurricane watch has been issued, the marina owner, operator,
138 employee, or agent may remove the vessel, if reasonable, from
139 its slip or take whatever reasonable actions are deemed
140 necessary to properly secure a vessel to minimize damage to a

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141 vessel and to protect marina property, private property, and the
142 environment and may charge the vessel owner a reasonable fee for
143 any such services rendered. In order to add such a provision to
144 a contract, the marina owner must provide notice to the vessel
145 owner in any such contract in a font size of at least 10 points
146 and in substantially the following form:

147
148 NOTICE TO VESSEL OWNER
149

150 The undersigned hereby informs you that in the event you fail to
151 remove your vessel from the marina promptly (timeframe to be
152 determined between the marina owner or operator and the vessel
153 owner) after the issuance of a tropical storm or hurricane watch
154 for (insert geographic area), Florida, under Florida law, the
155 undersigned or his or her employees or agents are authorized to
156 remove your vessel, if feasible, from its slip or take any and
157 all other reasonable actions deemed appropriate by the
158 undersigned or his or her employees or agents in order to better
159 secure your vessel and to protect marina property, private
160 property, and the environment. You are further notified that you
161 may be charged a reasonable fee for any such action.

162 (4) A marina owner, operator, employee, or agent shall not
163 be held liable for any damage incurred to a vessel from storms
164 or hurricanes and is held harmless as a result of such actions.
165 Nothing in this section may be construed to provide immunity to
166 a marina operator, employee, or agent for any damage caused by
167 intentional acts or negligence when removing or securing a
168 vessel as permitted under this section.

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Section 3. Subsection (2) of section 327.60, Florida Statutes, is amended to read:

327.60 Local regulations; limitations.--

(2) Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields anchorage of non-live-aboard vessels engaged in ~~the exercise of rights of~~ navigation.

Section 4. Section 328.64, Florida Statutes, is amended to read:

328.64 Change of interest and address.--

(1) The owner shall furnish the Department of Highway Safety and Motor Vehicles notice of the transfer of all or any part of his or her interest in a vessel registered or titled in this state pursuant to this chapter or chapter 328 or of the destruction or abandonment of such vessel, within 30 days thereof, on a form prescribed by the department. Such transfer, destruction, or abandonment shall terminate the certificate for such vessel, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such vessel, such transfer shall not terminate the certificate. The department shall provide the form for such notice and shall attach the form to every vessel title issued or reissued.

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197 (2) Any holder of a certificate of registration shall
198 notify the Department of Highway Safety and Motor Vehicles or
199 the county tax collector within 30 days, if his or her address
200 no longer conforms to the address appearing on the certificate
201 and shall, as a part of such notification, furnish the
202 department or such county tax collector with the new address.
203 The department shall ~~may~~ provide in its rules and regulations
204 for the surrender of the certificate bearing the former address
205 and its replacement with a certificate bearing the new address
206 or for the alteration of an outstanding certificate to show the
207 new address of the holder.

208 Section 5. Subsection (15) of section 328.72, Florida
209 Statutes, is amended to read:

210 328.72 Classification; registration; fees and charges;
211 surcharge; disposition of fees; fines; marine turtle stickers.--

212 (15) DISTRIBUTION OF FEES.--Except for the first \$2, \$1 of
213 which shall be remitted to the state for deposit into the Save
214 the Manatee Trust Fund created within the Fish and Wildlife
215 Conservation Commission and \$1 of which shall be remitted to the
216 state for deposit into the Marine Resources Conservation Trust
217 Fund to fund a grant program for public launching facilities,
218 pursuant to s. 327.47, giving priority consideration to counties
219 with more than 35,000 registered vessels, moneys designated for
220 the use of the counties, as specified in subsection (1), shall
221 be distributed by the tax collector to the board of county
222 commissioners for use only as provided in this section. Such
223 moneys to be returned to the counties are for the sole purposes
224 of providing recreational channel marking and other uniform

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225 waterway markers, public boat ramps, lifts, and hoists, marine
 226 railways, and other public launching facilities, derelict vessel
 227 removal, and other boating-related activities, for removal of
 228 vessels and floating structures deemed a hazard to public safety
 229 and health for failure to comply with s. 327.53, and for manatee
 230 and marine mammal protection and recovery. Counties shall that
 231 demonstrate through an annual detailed accounting report of
 232 vessel registration revenues that at least \$1 of the
 233 registration fees were spent as provided in this subsection on
 234 boating infrastructure shall only be required to transfer the
 235 first \$1 of the fees to the Save the Manatee Trust Fund. This
 236 report shall be provided to the Fish and Wildlife Conservation
 237 Commission no later than November 1 of each year. If, prior to
 238 January 1 of each calendar year, the annual detailed accounting
 239 report meeting the prescribed criteria has still not been
 240 provided to the commission, the tax collector of that county
 241 shall not distribute the moneys designated for the use of
 242 counties, as specified in subsection (1), to the board of county
 243 commissioners but shall, instead, for the next calendar year,
 244 remit such moneys to the state for deposit into the Marine
 245 Resources Conservation Trust Fund. The commission shall return
 246 those moneys to the county if the county fully complies with
 247 this section within that calendar year. If the county does not
 248 fully comply with this section within that calendar year, the
 249 moneys shall remain within the Marine Resources Trust Fund and
 250 may be appropriated for the purposes specified in this
 251 subsection ~~The commission shall provide an exemption letter to~~

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252 ~~the department by December 15 of each year for qualifying~~
253 ~~counties.~~

254 Section 6. Paragraph (g) of subsection (4) of section
255 376.11, Florida Statutes, is amended to read:

256 376.11 Florida Coastal Protection Trust Fund.--

257 (4) Moneys in the Florida Coastal Protection Trust Fund
258 shall be disbursed for the following purposes and no others:

259 (g) The funding of a grant program to ~~coastal~~ local
260 governments, pursuant to s. 376.15(2)(b) and (c), for the
261 removal of derelict vessels from the public waters of the state.

262 Section 7. Section 376.15, Florida Statutes, is amended to
263 read:

264 376.15 Derelict vessels; removal from public waters.--

265 (1) It is unlawful for any person, firm, or corporation to
266 store, leave, or abandon any derelict vessel as defined in s.
267 823.11(1) in this state ~~or leave any vessel in a wrecked,~~
268 ~~junked, or substantially dismantled condition or abandoned upon~~
269 ~~any public waters or at any port in this state without the~~
270 ~~consent of the agency having jurisdiction thereof or docked at~~
271 ~~any private property without the consent of the owner of the~~
272 ~~private property.~~

273 (2)(a) The Fish and Wildlife Conservation Commission and
274 its officers and all law enforcement officers as specified in s.
275 327.70 ~~are is hereby designated as the agency of the state~~
276 authorized and empowered to remove any derelict vessel as
277 defined in s. 823.11(1) ~~described in subsection (1)~~ from public
278 waters. All costs incurred by the commission or other law
279 enforcement agency in the removal of any abandoned or derelict

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280 vessel shall be recoverable against the owner of the vessel. The
 281 Department of Legal Affairs shall represent the commission in
 282 such actions.

283 (b) The commission may establish a program to provide
 284 grants to ~~coastal~~ local governments for the removal of derelict
 285 vessels from the public waters of the state. The program shall
 286 be funded from the Florida Coastal Protection Trust Fund.
 287 Notwithstanding the provisions in s. 216.181(11), funds
 288 available for grants may only be authorized by appropriations
 289 acts of the Legislature.

290 (c) The commission shall adopt by rule procedures for
 291 submitting a grant application and criteria for allocating
 292 available funds. Such criteria shall include, but not be limited
 293 to, the following:

294 1. The number of derelict vessels within the jurisdiction
 295 of the applicant.

296 2. The threat posed by such vessels to public health or
 297 safety, the environment, navigation, or the aesthetic condition
 298 of the general vicinity.

299 3. The degree of commitment of the local government to
 300 maintain waters free of abandoned and derelict vessels and to
 301 seek legal action against those who abandon vessels in the
 302 waters of the state.

303 (d) This section shall constitute the authority of ~~the~~
 304 ~~commission~~ for such removal, but is not intended to be in
 305 contravention of any applicable federal act.

306 ~~(e) The Department of Legal Affairs shall represent the~~
 307 ~~Fish and Wildlife Conservation Commission in such actions.~~

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308 Section 8. Paragraph (s) of subsection (2) of section
 309 403.813, Florida Statutes, is amended to read:
 310 403.813 Permits issued at district centers; exceptions.--
 311 (2) A permit is not required under this chapter, chapter
 312 373, chapter 61-691, Laws of Florida, or chapter 25214 or
 313 chapter 25270, 1949, Laws of Florida, for activities associated
 314 with the following types of projects; however, except as
 315 otherwise provided in this subsection, nothing in this
 316 subsection relieves an applicant from any requirement to obtain
 317 permission to use or occupy lands owned by the Board of Trustees
 318 of the Internal Improvement Trust Fund or any water management
 319 district in its governmental or proprietary capacity or from
 320 complying with applicable local pollution control programs
 321 authorized under this chapter or other requirements of county
 322 and municipal governments:
 323 (s) The construction, installation, operation, or
 324 maintenance of floating vessel platforms or floating boat lifts,
 325 provided that such structures:
 326 1. Float at all times in the water for the sole purpose of
 327 supporting a vessel so that the vessel is out of the water when
 328 not in use;
 329 2. Are wholly contained within a boat slip previously
 330 permitted under ss. 403.91-403.929, 1984 Supplement to the
 331 Florida Statutes 1983, as amended, or part IV of chapter 373, or
 332 do not exceed a combined total of 500 square feet, or 200 square
 333 feet in an Outstanding Florida Water, when associated with a
 334 dock that is exempt under this subsection or associated with a
 335 permitted dock with no defined boat slip or attached to a

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336 bulkhead on a parcel of land where there is no other docking
 337 structure, do not exceed a combined total of 500 square feet, or
 338 200 square feet in an Outstanding Florida Water;

339 3. Are not used for any commercial purpose or for mooring
 340 vessels that remain in the water when not in use, and do not
 341 substantially impede the flow of water, create a navigational
 342 hazard, or unreasonably infringe upon the riparian rights of
 343 adjacent property owners, as defined in s. 253.141;

344 4. Are constructed and used so as to minimize adverse
 345 impacts to submerged lands, wetlands, shellfish areas, aquatic
 346 plant and animal species, and other biological communities,
 347 including locating such structures in areas where ~~no~~ seagrasses
 348 are least dense exist if such areas are present adjacent to the
 349 dock or bulkhead; and

350 5. Are not constructed in areas specifically prohibited
 351 for boat mooring under conditions of a permit issued in
 352 accordance with ss. 403.91-403.929, 1984 Supplement to the
 353 Florida Statutes 1983, as amended, or part IV of chapter 373, or
 354 other form of authorization issued by a local government.

355
 356 Structures that qualify for this exemption are relieved from any
 357 requirement to obtain permission to use or occupy lands owned by
 358 the Board of Trustees of the Internal Improvement Trust Fund and
 359 shall not be subject to any permitting requirements,
 360 registration requirements, or other more stringent regulation by
 361 any local government. The exemption provided in this paragraph
 362 shall be in addition to the exemption provided in paragraph (b).
 363 ~~By January 1, 2003,~~ The department shall adopt a general permit

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by rule for the construction, installation, operation, or maintenance of those floating vessel platforms or floating boat lifts that do not qualify for the exemption provided in this paragraph but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of such general permit shall also constitute permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund. ~~Upon the adoption of the rule creating such general permit,~~ No local government shall impose a more stringent regulation, permitting requirement, or registration requirement on floating vessel platforms or floating boat lifts covered by such general permit.

Section 9. Subsection (3) of section 705.101, Florida Statutes, is amended to read:

705.101 Definitions.--As used in this chapter:

(3) "Abandoned property" means all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels as defined in s. 823.11(1) ~~Vessels determined to be derelict by the Fish and Wildlife Conservation Commission or a county or municipality in accordance with the provisions of s. 823.11 are included within this definition.~~

Section 10. Subsection (4) of section 705.103, Florida Statutes, is amended to read:

705.103 Procedure for abandoned or lost property.--

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391 (4) The owner of any abandoned or lost property who, after
 392 notice as provided in this section, does not remove such
 393 property within the specified period shall be liable to the law
 394 enforcement agency for all costs of removal, storage, and
 395 destruction of such property, less any salvage value obtained by
 396 disposal of the property. Upon final disposition of the
 397 property, the law enforcement officer shall notify the owner, if
 398 known, of the amount owed. In the case of an abandoned vessel
 399 ~~boat~~ or motor vehicle, any person who neglects or refuses to pay
 400 such amount is not entitled to be issued a certificate of
 401 registration for such vessel ~~boat~~ or motor vehicle, or any other
 402 vessel ~~boat~~ or motor vehicle, until such costs have been paid.
 403 The law enforcement officer shall supply the Department of
 404 Highway Safety and Motor Vehicles with a list of persons whose
 405 vessel ~~boat~~ registration privileges or whose motor vehicle
 406 privileges have been revoked under this subsection. Neither the
 407 department nor any other person acting as agent thereof shall
 408 issue a certificate of registration to a person whose vessel
 409 ~~boat~~ or motor vehicle registration privileges have been revoked,
 410 as provided by this subsection, until such costs have been paid.

411 Section 11. Section 823.11, Florida Statutes, is amended
 412 to read:

413 823.11 Abandoned and derelict vessels; removal; penalty.--

414 (1) "Derelict vessel" means any vessel, as defined in s.
 415 327.02, that is left stored or abandoned:

416 (a) In a wrecked, junked, or substantially dismantled
 417 condition upon any public waters of this state.

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(b) At any port in this state without the consent of the agency having jurisdiction thereof.

(c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

(2) It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel as defined in this section in this state ~~or leave any vessel as defined by maritime law in a wrecked, junked, or substantially dismantled condition or abandoned upon or in any public water or at any port in this state without the consent of the agency having jurisdiction thereof, or docked at any private property without the consent of the owner of such property.~~

(3) ~~(a)-(2)~~ The Fish and Wildlife Conservation Commission and its officers and all law enforcement officers as specified in s. 327.70 are ~~is designated as the agency of the state~~ authorized and empowered to remove or cause to be removed any abandoned or derelict vessel from public waters in any instance when the same obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment. Removal of vessels pursuant to this section may be funded by grants provided in ss. 206.606 and 376.15. The Fish and Wildlife Conservation Commission is directed to implement a plan for the procurement of any available federal disaster funds and to use such funds for the removal of derelict vessels. All costs incurred by the commission or other law enforcement agency in the removal of any abandoned or derelict vessel as set out above shall be recoverable against the owner thereof. The Department of Legal Affairs shall represent the commission in such actions.

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As provided in s. 705.103(4), any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.

(b) When a derelict vessel is docked or grounded at or beached upon private property without the consent of the owner of the property, the owner of the property may remove the vessel at the vessel owner's expense 60 days after compliance with the notice requirements specified in s. 328.17(5). The private property owner may not hinder reasonable efforts by the vessel owner or agent to remove the vessel. Any notice given pursuant to this paragraph shall be presumed delivered when it is deposited with the United States Postal Service, certified, and properly addressed with prepaid postage. Pursuant to an agreement with the governing body of a county or municipality, and upon a finding by the commission that the county or municipality is competent to undertake said responsibilities, the commission may delegate to the county or municipality its authority to remove or cause to be removed an abandoned or derelict vessel from public waters within the county or municipality.

(4)(3) Any person, firm, or corporation violating this act commits is guilty of a misdemeanor of the first degree and shall be punished as provided by law. Conviction under this section shall not bar the assessment and collection of the civil penalty provided in s. 376.16 for violation of s. 376.15. The court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may

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474 | order the imposition of such civil penalty in addition to any
475 | sentence imposed for the first criminal offense.

476 | Section 12. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7175**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: State Resources Council
2 Representative Needelman offered the following:
3

4 **Amendment**

5 Remove line 156 and insert:
6 remove your vessel, if reasonable, from its slip or take any and
7

Amendment No. 2

COUNCIL/COMMITTEE ACTION

OTHER _____

amending 328.72, F.S.; revising provisions relating to the distribution of revenues from registration fees; requiring counties to use funds

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 7175**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: State Resources Council
Representative Needelman offered the following:

Amendment

Remove lines 359-375 and insert:
shall not be subject to any more stringent permitting
requirements, registration requirements, or other regulation by
any local government. Local governments may require either
permitting or one-time registration of floating vessel platforms
as necessary to ensure compliance with the exemption criteria in
this section, to ensure compliance with local ordinances, codes,
or regulations relating to building or zoning, which are no more
stringent than the exemption criteria in this section; and to
ensure proper, installation, and maintenance of a floating
vessel platform or floating boat lift that is proposed to be
attached to a bulkhead or parcel of land where there is no other
docking structure. The exemption provided in this paragraph
shall be an addition to the exemption provided in paragraph (b).
~~By January 1, 2003,~~ The department shall adopt a general permit
by rule for the construction, installation, operation, or
maintenance of those floating vessel platforms or floating boat

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

22 lifts that do not qualify for the exemption provided in this
23 paragraph but do not cause significant adverse impacts to occur
24 individually or cumulatively. The issuance of such general
25 permit shall also constitute permission to use or occupy lands
26 owned by the Board of Trustees of the Internal Improvement Trust
27 Fund.—~~Upon the adoption of the rule creating such general~~
28 ~~permit,~~ No local government shall impose a more stringent
29 regulation, permitting requirement, registration requirement, or
30 other regulation covered by such general permit. Local
31 governments may require either permitting or one-time
32 registration of floating vessel platforms as necessary to ensure
33 compliance with the general permit in this section, to ensure
34 compliance with local ordinances, codes, or regulations relating
35 to building or zoning, which are no more stringent than the
36 general permit in this section; and to ensure proper,
37 installation, and maintenance of a floating vessel platform or
38 floating boat lift that is proposed to be attached to a bulkhead
39 or parcel of land where there is no other docking structure—on
40 ~~floating vessel platforms, or floating boat lifts covered by~~
41 ~~such general permit.~~
42

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7207 PCB AGEA 06-01 Relating to Water Management Districts
SPONSOR(S): Agriculture & Environment Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture & Environment Appropriations Committee	10 Y, 0 N	Dixon	Dixon
1) State Resources Council		Lotspeich <i>RAL</i>	Hamby <i>720</i>
2) Fiscal Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends current law to require the legislature to annually review the authorized millage rate for each water management district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by Chapter 373, F.S. However, the maximum millage rate for each district cannot exceed the rate established in subsection 373.503(3), F.S.

The bill revises the fiscal year for the water management districts from October 1 through September 30 to July 1 through June 30, and revises the water management district budget review process accordingly.

The bill has no fiscal impact.

This bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The legislature will review the water management districts' millage rates each year and set the amount of revenue each can raise.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Water Management District Millage Rates

Article VII, Section 9(b) of the Florida Constitution provides that ad valorem taxes may be levied for water management purposes in amounts no greater than 0.05 mills for the northwest portion of the state and no greater than 1.0 mill for the remainder of the state.

The legislature has created five water management districts.¹ The legislature has declared that the millage authorized for water management purposes by the state constitution shall only be levied by the five water management districts.² The districts may levy ad valorem taxes on property within the district solely for the purposes of water management as set forth by the legislature.³

The legislature has authorized millage rates for the districts that are equal to or less than the maximum allowed by the state constitution.⁴ The current maximum total millage rate for each district is:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.6 mill.
4. Southwest Florida Water Management District: 1.0 mill.
5. South Florida Water Management District: 0.80 mill.

The water management districts are special taxing districts.⁵ A special taxing district may not be created with general taxing authority, and may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district.⁶

The legislature has determined that the ad valorem taxes which the water management districts are authorized to levy are in proportion to the benefits to be derived by the real estate within the districts.⁷

Water Management District Budget Review

Background

The process for the adoption of water management district budgets originated in 1949 with the creation of flood control districts under Chapter 378, F.S.⁸ Under that process, the fiscal year for the flood

¹ Section 373.069, F.S.

² Paragraph 373.503(2)(a), F.S.

³ Paragraph 373.503(3)(a), F.S.

⁴ Id.

⁵ Paragraph 189.403(6), F.S.

⁶ *Crowder v. Phillips*, 146 Fla. 440, 1 So. 2d 629 (1941); *State ex rel. City of Gainesville v. St. Johns River Water Management Dist.*, 408 So. 2d 1067 (Fla. Dist. Ct. App. 1st Dist. 1982).

⁷ Subsection 373.503(4), F.S.

control districts was July 1 through June 30. No executive or legislative branch review of the budgets was provided for in statute. In 1972, the Water Resources Act of 1972 created the five water management districts and incorporated the budget review provisions of Chapter 378, F.S., into Part V of Chapter 373, F.S., creating section 373.536, F.S.⁹ No change was made to the fiscal year or to the review process.

As part of an omnibus finance and taxation bill in 1974 addressing numerous issues relating to ad valorem taxation, the fiscal year for the water management districts was changed to October 1 through September 30.¹⁰

In 1991, subsection (5) was added to s. 373.536, F.S., to require that all water management district "tentative" budgets be submitted to the Department of Environmental Regulation (the predecessor agency to the current Department of Environmental Protection) by August 5 of each year.¹¹ The DER was to review the budgets and submit comments to the governing board and to the Governor by September 5. Prior to December 15, the DER was to file with the Governor and the legislature a report summarizing "the expenditures of the districts by program area."

Paragraph 373.536(5)(a), F.S., was amended in 1993 to require that the tentative budgets also be submitted to the Governor's Office and the chairs of the appropriations committees in the Senate and House by August 5.¹² Paragraph 373.536(5)(b), F.S., was also amended in order to allow the Governor's Office and the appropriations chairs to submit comments to the district governing boards by September 5.

In 1994, the legislature created the Water Management District Review Commission to perform a comprehensive review of Florida's water management system including consideration of ways to improve financial and programmatic accountability of districts and potential revision of the districts' budget development and adoption procedures.¹³ The Commission made several recommendations including:

- The Governor should approve or reject the annual budget of each water management district.
- The Executive Office of the Governor should establish permanent position(s) to review the financial and programmatic activities of Florida's five water management districts. The position(s) should further serve as Executive Branch liaison to, and coordinate appropriate review deadlines and notices with, the legislative committees having substantive and appropriation jurisdiction over water management districts.
- Each district should provide a copy of its proposed budget, the past year's expenditures, and its annual in-house financial audit to the Governor, the President of the Senate, the Speaker of the House, the chairs of all legislative committees and sub-committees with substantive or appropriation jurisdiction over water management districts, the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district ("the entities"). The district should [shall] respond in writing to each comment received from any of the entities, and should [shall] furnish copies of those comments and written responses to all entities.

The Commission had a 1996 legislative package to implement its recommendations. While the bulk of the recommendations failed to pass, s. 373.536, F.S., was amended in 1996 to authorize the Governor

⁸ s. 28, ch. 25209, 1949 Laws of Florida

⁹ s. 25, ch. 72-299, Laws of Florida

¹⁰ s. 18, ch. 74-234, Laws of Florida

¹¹ s. 9, ch. 91-288, Laws of Florida

¹² s. 24, ch. 93-213, Laws of Florida

¹³ ch. 94-270, Laws of Florida

to "approve or disapprove, in whole or in part, the budget of each water management district."¹⁴ The Governor was also required to "develop a process to facilitate review and communication regarding water management district budgets."

The stakeholders involved with the work of the Water Management District Review Commission continued to work on the concepts and language during the 1996-97 interim. This work resulted in legislation in 1997. The 1997 legislation further amended s. 373.536, F.S., to require that the tentative budgets be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees, as well as to the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district.¹⁵

Current Law

Under current law, the fiscal year for the water management districts is from October 1 through September 30.¹⁶ In this fiscal year cycle, the first step is for the budget officer of each water management district to submit to the governing board of the district by July 15 a tentative budget for the fiscal year beginning October 1.¹⁷

By August 1, a copy of the tentative budget is to be provided by the district to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees.¹⁸ The House and Senate appropriations chairs may submit comments and objections on the proposed budgets to the districts by September 5.¹⁹ In its adoption of the final budget, the governing board must include a written response to any comments or objections of the appropriation chairs. The record of the governing board meeting adopting the final budget is required to be transmitted to the Governor, and the chairs of the appropriation committees.²⁰

Before December 15, the Governor's Office is required to file with the legislature a report that summarizes its review of the tentative budgets.²¹

EFFECT OF PROPOSED CHANGES

Millage Rates

The bill provides that in order to insure that the taxes authorized by Chapter 373, F.S., continue to be in proportion to the benefits derived of real estate within the districts, the legislature is required to annually review the authorized millage rate for each district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by Chapter 373, F.S. However, the maximum millage rate for each district cannot exceed the rate currently established in subsection 373.503(3), F.S.

Should the legislature not set the revenue in any year by July 1, the bill contains a contingency provision allowing the districts to raise revenues equal to those authorized in the preceding fiscal year with an adjustment for the percentage change in the Consumer Price Index for the preceding fiscal year.

¹⁴ s. 5, ch. 96-339, Laws of Florida

¹⁵ s. 16, ch. 97-160, Laws of Florida

¹⁶ Subsection 373.536(1), F.S.

¹⁷ Subsection 373.536(2), F.S.

¹⁸ Paragraph 373.536(5)(c), F.S.

¹⁹ Paragraph 373.536(5)(e), F.S.

²⁰ Id.

²¹ Paragraph 373.536(5)(f), F.S.

Budget Review

In order to facilitate the legislature's annual review of the millage rate, the bill revises the water management district fiscal year to have it run concurrent with the state fiscal year; that is, from July 1 through June 30.

The bill removes the current requirement that the tentative budget be submitted to the governing board by July 15, and changes from August 1 to February 1 the date by which the tentative budgets are to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees.

The bill also changes the date by which the Governor's Office must submit its report summarizing the district budgets from December 15 to September 15.

C. SECTION DIRECTORY:

Section 1. Amends section 373.503, F.S., relating to water management districts millage rates.

Section 2. Amends section 373.536, F.S., relating to the fiscal year of the water management districts.

Section 3. Provides that each district should begin planning for the change in fiscal year.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill provides for the legislature to annually review the millage rates and set the amount of revenue the five water management districts can raise. This could have the impact of lowering property taxes or raising property taxes within the water management districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

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A bill to be entitled

An act relating to water management districts; amending s. 373.503, F.S.; providing that a water management district's millage rate is subject to annual authorization by the Legislature; requiring the Legislature to annually review a district's millage rate; requiring the Legislature to annually set the amount of revenue authorized to be raised by a district from ad valorem taxes; providing for the amount of authorized revenue to be raised by a district if the Legislature does not set the amount by a specified date; amending s. 373.536, F.S.; revising the beginning and ending dates of a district's fiscal year; revising the date by which a district must submit a tentative budget to the Governor and the Legislature; eliminating the authorization for the Legislature to comment on such budgets; eliminating the requirement for districts to respond to such comments and to forward such responses to the Governor and Legislature; revising the date by which the Executive Office of the Governor must file a specified report with the Legislature; directing districts to implement conforming measures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 373.503, Florida Statutes, is amended, subsection (5) is

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renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

373.503 Manner of taxation.--

(3)(a) Subject to annual authorization by the Legislature to levy ad valorem taxes under subsection (5), the districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, 1949, Laws of Florida, as amended, and chapter 61-691, Laws of Florida, as amended. The authority to levy ad valorem taxes as provided in this act shall commence with the year 1977. However, the taxes levied for 1977 by the governing boards pursuant to this section shall be prorated to ensure that no such taxes will be levied for the first 4 days of the tax year, which days will fall prior to the effective date of the amendment to s. 9(b), Art. VII of the State Constitution, which was approved March 9, 1976. When appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695. ~~Beginning with the taxing year 1977,~~ and Notwithstanding the provisions of any other general or special law to the contrary and subject to annual authorization by the Legislature to levy ad valorem taxes under subsection (5), the maximum total millage rate for district and basin purposes shall be:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.6 mill.
4. Southwest Florida Water Management District: 1.0 mill.

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5. South Florida Water Management District: 0.80 mill.

(5) To ensure that the taxes authorized by this chapter continue to be in proportion to the benefits derived by the several parcels of real estate within the districts, the Legislature shall annually review the authorized millage rate for each district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by this chapter. However, if the annual amount of revenue authorized to be raised by each district is not set by the Legislature on or before July 1 of each year, each district is authorized to raise the amount of revenue authorized by the Legislature in the preceding fiscal year and adjusted by the percentage change in the Consumer Price Index for the preceding fiscal year.

Section 2. Subsections (1) and (2) and paragraphs (c), (e), and (f) of subsection (5) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.--

(1) FISCAL YEAR.--The fiscal year of districts created under the provisions of this chapter shall extend from July ~~October~~ 1 of one year through June ~~September~~ 30 of the following year.

(2) BUDGET SUBMITTAL.--The budget officer of the district shall, ~~on or before July 15 of each year,~~ submit for consideration by the governing board of the district a tentative budget for the district covering its proposed operations and funding requirements for the ensuing fiscal year.

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(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.--

(c) Each water management district shall, by February August 1 of each year, submit for review a tentative budget to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees with substantive or fiscal jurisdiction over water management districts, as determined by the President of the Senate or the Speaker of the House of Representatives as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district.

~~(e) By September 5 of the year in which the budget is submitted, the House and Senate appropriations chairs may transmit to each district comments and objections to the proposed budgets. Each district governing board shall include a response to such comments and objections in the record of the governing board meeting where final adoption of the budget takes place, and the record of this meeting shall be transmitted to the Executive Office of the Governor, the department, and the chairs of the House and Senate appropriations committees.~~

(e) ~~(f)~~ The Executive Office of the Governor shall annually, on or before September ~~December~~ 15, file with the Legislature a report that summarizes its review of the water management districts' tentative budgets and displays the adopted budget allocations by program area. The report must identify the districts that are not in compliance with the reporting

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
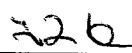
111 requirements of this section. State funds shall be withheld from
112 a water management district that fails to comply with these
113 reporting requirements.

114 Section 3. For the 2006-2007 and 2007-2008 fiscal years,
115 notwithstanding any law to the contrary, the water management
116 districts are directed to budget and plan for their fiscal
117 management to conform to the provisions of this act.

118 Section 4. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7239 PCB AG 06-02 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	9 Y, 0 N	Kaiser	Reese
1) State Resources Council		Kaiser 	Hamby 
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7239 addresses a variety of issues relating to the Department of Agriculture and Consumer Services (department). Specifically, the bill:

- Revises education requirements for a private security license requiring Class "D" licensees to complete training within 180 days of applying for the license;
- Defines "caller identification service" and requires telephone solicitors to transmit certain identifying information to be displayed by a caller identification service;
- Preempts the regulation of refunds by retail sales establishments to the department;
- Clarifies provisions prohibiting local governments from imposing monetary penalties on owners of shopping carts under certain conditions;
- Defines the term "alternative fuel" and includes alternative fuel in the definition of petroleum fuel for purposes of inspection of petroleum fuel quality;
- Exempts persons delivering specified amounts of liquefied petroleum gas to consumers from having to meet minimum storage requirements;
- Eliminates a requirement for an agency receiving a consumer complaint from the department to file progress reports with the department; and
- Creates an exemption from insurance requirements for a governmental entity that is operating an amusement ride.

The bill has no fiscal impact on state or local government. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires telephone solicitors to transmit the phone number and name of the company they represent to the caller identification service of the recipient of the telephone solicitation. The bill also provides for the preemption of the regulation of refunds by retail sales establishments to the Department of Agriculture and Consumer Services (department). The bill grants the department authority to inspect facilities selling alternative fuels. The bill deletes a requirement for other agencies to report back to the department regarding the disposition of complaints.

Maintain public security: The bill requires private security officers to complete the total 40 hours of professional training.

B. EFFECT OF PROPOSED CHANGES:

Division of Licensing

When the Cabinet was reorganized in 2003, the Division of Licensing (division) was transferred from the Department of State to the Department of Agriculture and Consumer Services (department). There are still some statutes that reference the division operating within the Department of State. This legislation corrects those references to reflect the transfer of the division to the department.

Security Officers (Class "D") Licensure

Currently, an applicant for a Class "D" license is required to complete a minimum of 40 hours of professional training at a school or training facility licensed by the department.¹ By rule, the department establishes the general content of the training. An applicant may satisfy the training requirement either by successfully completing all 40 hours of training before the initial license application or by successfully completing 24 hours of training before the initial license application and completing the remaining 16 hours of training upon the first application for renewal of the license.² This exemption enables a person, licensed prior to October 1, 1994, to allow his/her license to expire, then re-apply using the same 24-hours of training, thus avoiding ever completing the remaining 16 hours of training.

The bill requires the initial 24 hours of training to be taken for licensure, with the remaining 16 hours of training to be completed within 180 days after the submission of the application. The bill provides for an individual's license to be suspended in the event documentation of the training is not submitted within the specified timeframe.

Telephone Solicitation

The Division of Consumer Services (division), within the department, regulates telephone solicitation. Current law requires telephone solicitors, making unsolicited telephonic sales calls to a residential, mobile, or telephonic paging device telephone number, to identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact with the person who is the subject of the solicitation telephone call.³ The law makes no mention regarding information transmitted by the solicitation call to the caller identification service.

The bill requires persons making telephonic sales call to transmit the telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. The bill provides that the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a

¹ Section 493.6303(4)(a), F.S.

² Individual licensed before October 1, 1994, do not have to complete additional training hours in order to renew their licenses. (s. 493.6303(4)(b), F.S.)

³ Section 501.059(2), F.S.

telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours, may be substituted.

"Caller identification service" is defined as a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

The bill prohibits a telephone solicitor from intentionally disguising his/her voice or concealing his/her identity to confuse or defraud the person receiving the solicitation call.

Retail Sales Establishments

Existing law provides that every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure to exhibit a "no refund" sign under such circumstances at the point of sale means that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided that the merchandise is unused and in the original carton, if one was furnished.⁴

The bill expressly preempts the regulation of refunds in retail sales establishments to the department and authorizes the department to adopt rules to enforce the provisions s. 501.142, F.S. The bill also authorizes a local government to impose penalties. The bill provides means to the department for addressing violations. Monies recovered by the department may be deposited into the General Inspection Trust Fund. Monies recovered by a local government may be deposited into the appropriate local account.

Shopping Carts

Current law provides that no fee, fine, or costs may be assessed against the owner of a shopping cart found on public property, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and such fee, fine, or cost has been approved by the department.⁵

The bill specifies that no fee, fine, or costs may be assessed against the owner of a shopping cart unless the cart is found on public property **and** it was removed from the premises or parking area of a retail establishment by the cart's owner or an employee acting on the owner's behalf. Additionally, the bill provides a "grandfather clause" for ordinances adopted prior to June 2002 which require a business to install an electronic retention system to retain shopping carts within the real property of a business location.

Alternative Fuel

Chapter 525, F.S., addresses gasoline and oil inspection but does not specifically include alternative fuels, such as alcohol-blended and biodiesel fuels. In light of the recent interest and advancements in the use of alternative fuels and their increasing presence in the marketplace, the department sees a need to define and establish quality standards for such fuels.

The bill provides a definition for alternative fuel. In doing so, the department is granted the authority to inspect facilities selling alternative fuels to the general public. The department is also authorized to adopt relevant fuel quality standards for alternative fuels into department rule.

⁴ Section 501.142(1), F.S.

⁵ Section 506.5131(2), F.S.

Liquefied Petroleum Gas

Section 527.11, F.S., provides for minimum storage requirements relating to liquefied petroleum gas (LPG). The intent of minimum storage requirements is to ensure there is an adequate supply of product during peak periods such as winter months or hurricane season, when there is the potential for product shortage. Current law⁶ provides an exemption from minimum storage requirements for companies operating cylinder exchange units or a single dispenser serving liquid product directly to the public. These companies are not providing product for essential services, such as home heating, but rather providing product for non-essential services, such as grills, mosquito control, etc. The current language prohibits these companies from delivering small cylinders of LPG to their customers or from conducting the periodic testing required by law to ensure cylinder suitability for continued safe use, without first obtaining either a storage container of 18,000 gallons or acquiring multiple licenses.

The bill allows a licensee who has a single dispensing unit to deliver small cylinders of LPG to residential customers without the requirement of building or leasing 18,000 gallons worth of storage.

Consumer Complaint Reports

Current law⁷ requires the Division of Consumer Services to forward consumer complaints, which fall under the jurisdiction of another agency, to that agency. The receiving agency has 30 days to acknowledge receipt of the complaint and report on the disposition of the complaint. If the 30 day deadline is not met, the agency must file additional reports with the department concerning the status of the complaint.

The bill deletes the requirement for other agencies to report back to the department regarding the disposition of the complaint. Additionally, the bill removes a cross-reference to the report from statute.

Fair Rides

Current statute requires amusement ride operators to have in effect, at all times, an insurance policy or surety bond in the amount of \$1 million per occurrence and \$1 million in the aggregate procured from an insurer or surety that is licensed to transact business in Florida or that is approved as a surplus lines insurer. This requirement is not appropriate for governmental entities who have limited liability pursuant to s. 768.28(16), F.S.

The bill creates an exemption for amusement rides operated by governmental entities that are covered under the limited liability statutes.

Other

The bill corrects a cross-reference that was inadvertently omitted, which clarifies that liquid petroleum inspections fall under the Division of Standards within the department.

C. SECTION DIRECTORY:

Section 1: Amends s. 493.6106, F.S.; corrects reference to state agency.

Section 2: Amends s. 493.6121, F.S.; corrects reference to state agency.

Section 3: Amends s. 493.6303, F.S.; directs the Department of Agriculture and Consumer Services (department) to establish training hours required for Class "D" private security licensure; provides timeframe for completing training; provides for suspension of license in certain circumstances; and, provides exemption from training requirements.

Section 4: Amends s. 501.059, F.S.; prohibits telephone solicitor from blocking certain information from a recipient's caller identification service; provides an exception; and provides a definition.

⁶ Section 527.11(3), F.S.

⁷ Section 570.544, F.S.

Section 5: Amends s. 501.142, F.S.; preempts the regulation of refunds to the department; allows for the adoption of rules for enforcement; provides for enforcement by local government; provides penalties for violations; provides for moneys recovered to be deposited into designated trust fund; authorizes a local government to impose penalties; and, provides for moneys recovered by local governments to be deposited into designated accounts.

Section 6: Amends s. 506.5131, F.S.; revises provisions relating to shopping carts.

Section 7: Amends s. 525.01, F.S.; provides a definition for alternative fuel.

Section 8: Amends s. 527.11, F.S.; exempts the delivery of certain amounts of propane gas for use with outdoor equipment or appliances from provisions relating to the delivery of liquefied petroleum gas; and, requires a person delivering liquefied petroleum gas in bulk to comply with certain storage requirements.

Section 9: Amends s. 570.46, F.S.; revises the duties of the Division of Standards.

Section 10: Amends s. 570.47, F.S.; revises a cross reference.

Section 11: Amends s. 570.544, F.S.; deletes provisions requiring agencies receiving a complaint to file a progress report with the Division of Consumer Services.

Section 12: Repeals s. 526.3135, F.S.; relating to reports filed with the Division of Consumer Services.

Section 13: Amends s. 616.242, F.S.; exempts certain governmental entities from insurance requirements.

Section 14: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Division of Standards: The department states that there is no fiscal impact currently associated with the alternative fuels. However, as these fuels capture a significant market share in future years, there will be additional costs to the department associated with regulation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the department, the exemption of bulk storage in order to deliver 40 pounds or less of propane capacity will have a positive impact on certain LP gas licensees. This exemption results in considerable, indeterminate cost savings for the licensee, many of whom are small business operators.

The department reports that exempting governmental entities from insurance requirements for amusement rides will have a positive affect on counties and municipalities that operate amusement rides (i.e. water slides, carousels, trains). Insurance requirements imposed currently by s. 616.242(9), F.S., will not apply if the municipalities are covered by the provisions of s. 768.28(16), F.S., of the state's self insurance program.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Agriculture and Consumer Services rule-making authority to enforce provisions relating to regulation of refunds from retail sales establishments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

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1 A bill to be entitled

2 An act relating to the Department of Agriculture and

3 Consumer Services; amending s. 493.6106, F.S.; clarifying

4 that private investigative, private security, and

5 repossession services are licensed by the department;

6 amending s. 493.6121, F.S.; authorizing the department to

7 institute judicial proceedings to enforce ch. 493, F.S.,

8 or any rule or order of the department; amending s.

9 493.6303, F.S.; revising the requirements for a Class "D"

10 private security license; requiring the department to

11 establish the number of hours of each subject area to be

12 taught in training; providing for automatic suspension of

13 a license upon failure to submit documentation of

14 completing the required training; prescribing requirements

15 and conditions for persons licensed before a certain date;

16 providing exemptions; amending s. 501.059, F.S.;

17 prohibiting a telephone solicitor from blocking certain

18 information from a recipient's caller identification

19 service; providing an exception; authorizing a telephone

20 solicitor to substitute certain information provided to

21 the recipient's caller identification service; providing a

22 definition; prohibiting alteration of a caller's voice

23 during a telephonic sales call under certain circumstances

24 and for certain purposes; amending s. 501.142, F.S.;

25 providing that the regulation of refunds in retail sales

26 establishments is preempted to the department; authorizing

27 the department to adopt rules; authorizing the department

28 to enter orders for certain violations; requiring that any

29 moneys recovered by the department as a penalty be
30 deposited in the General Inspection Trust Fund;
31 authorizing a local government to impose penalties;
32 requiring that any moneys recovered by a local government
33 as a penalty be deposited in the appropriate local
34 account; amending s. 506.5131, F.S.; revising provisions
35 relating to assessment of fees, fines, and costs against
36 the owner of a shopping cart; providing an exemption;
37 amending s. 525.01, F.S.; defining the term "alternative
38 fuel" for purposes of ch. 525, F.S., relating to the
39 inspection of gasoline and oil; amending s. 527.11, F.S.;
40 exempting the delivery of certain amounts of propane gas
41 for use with outdoor equipment or appliances from
42 provisions governing the delivery of liquefied petroleum
43 gas; requiring that a person delivering liquefied
44 petroleum gas in bulk comply with certain storage
45 requirements; amending ss. 570.46 and 570.47, F.S.;
46 authorizing the Division of Standards within the
47 department to enforce ch. 527, F.S., relating to the sale
48 of liquefied petroleum gas; amending s. 570.544, F.S.;
49 deleting provisions requiring that an office or agency
50 receiving a complaint file progress reports with the
51 Division of Consumer Services within the department;
52 repealing s. 526.3135, F.S., relating to reports by the
53 Division of Standards, to conform to changes made by the
54 act; amending s. 616.242, F.S.; exempting certain
55 governmental entities from requirements that operators of
56 amusement rides maintain specified amounts of insurance

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coverage; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.--

(2) Each agency shall have a minimum of one physical location within this state from which the normal business of the agency is conducted, and this location shall be considered the primary office for that agency in this state.

(c) Each Class "A," Class "B," Class "R," branch office, or school licensee shall display, in a place that is in clear and unobstructed public view, a notice on a form prescribed by the department stating that the business operating at this location is licensed and regulated by the Department of Agriculture and Consumer Services State and that any questions or complaints should be directed to the department.

Section 2. Subsections (5) and (7) of section 493.6121, Florida Statutes, are amended to read:

493.6121 Enforcement; investigation.--

(5) In order to carry out the duties of the department prescribed in this chapter, designated employees of the Division of Licensing of the Department of Agriculture and Consumer Services State may obtain access to the information in criminal justice information systems and to criminal justice information as defined in s. 943.045, on such terms and conditions as are reasonably calculated to provide necessary information and

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85 protect the confidentiality of the information. Such criminal
86 justice information submitted to the division is confidential
87 and exempt from the provisions of s. 119.07(1).

88 (7) The department may institute ~~of Legal Affairs shall~~
89 ~~represent the Department of Agriculture and Consumer Services in~~
90 ~~judicial proceedings in the appropriate circuit court seeking~~
91 ~~enforcement of this chapter, or any rule or order of the~~
92 ~~department upon an action by any party seeking redress against~~
93 ~~the department, and shall coordinate with the department in the~~
94 ~~conduct of any investigations incident to its legal~~
95 ~~responsibility.~~

96 Section 3. Effective January 1, 2007, subsection (4) of
97 section 493.6303, Florida Statutes, is amended to read:

98 493.6303 License requirements.--In addition to the license
99 requirements set forth elsewhere in this chapter, each
100 individual or agency shall comply with the following additional
101 requirements:

102 (4) (a) ~~Effective October 1, 1994,~~ An applicant for a Class
103 "D" license must complete ~~have completed~~ a minimum of 40 hours
104 of professional training at a school or training facility
105 licensed by the department. The department shall by rule
106 establish the general content and number of hours of each
107 subject area to be taught ~~the training.~~

108 (b) An applicant may fulfill the training requirement
109 prescribed in paragraph (a) by submitting proof of:

110 1. Successful completion of the total number of required
111 ~~40~~ hours of training before initial application for a Class "D"
112 license; or

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2. Successful completion of 24 hours of training before initial application for a Class "D" license, and successful completion of the remaining 16 hours of training within 180 days after the date that ~~upon the first application is submitted for renewal of,~~ a Class "D" license. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended until such time as proof of the required training is provided to the department ~~However, individuals licensed before October 1, 1994, need not complete additional training hours in order to renew their licenses.~~

However, any person whose license has been revoked, suspended pursuant to subparagraph 2., or whose license has been expired for 1 year or longer is considered, upon reapplication for a license, an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as prescribed in paragraph (a) before a license will be issued. Any person whose license was issued before January 1, 2007, and whose license has been expired for less than 1 year must, upon reapplication for a license, submit documentation of completion of the total number of hours of training prescribed by law at the time her or his initial license was issued before another license will be issued. This subsection does not require an individual licensed before January 1, 2007, to complete additional training hours in order to renew an active license, beyond the required total amount of training within the

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141 timeframe prescribed by law at the time she or he was licensed.

142 Section 4. Paragraphs (c) and (d) are added to subsection
143 (7) of section 501.059, Florida Statutes, to read:

144 501.059 Telephone solicitation.--

145 (7)

146 (c) It shall be unlawful for any person who makes a
147 telephonic sales call or causes a telephonic sales call to be
148 made to fail to transmit or cause not to be transmitted the
149 telephone number and, when made available by the telephone
150 solicitor's carrier, the name of the telephone solicitor to any
151 caller identification service in use by a recipient of a
152 telephonic sales call. However, it shall not be a violation to
153 substitute, for the name and telephone number used in or billed
154 for making the call, the name of the seller on behalf of which a
155 telephonic sales call is placed and the seller's customer
156 service telephone number, which is answered during regular
157 business hours. For purposes of this section, the term "caller
158 identification service" means a service that allows a telephone
159 subscriber to have the telephone number and, where available,
160 the name of the calling party transmitted contemporaneously with
161 the telephone call and displayed on a device in or connected to
162 the subscriber's telephone.

163 (d) It shall be unlawful for any person who makes a
164 telephonic sales call or causes a telephonic sales call to be
165 made to intentionally alter the voice of the caller in an
166 attempt to disguise or conceal the identity of the caller in
167 order to defraud, confuse, or financially or otherwise injure
168 the recipient of a telephonic sales call or in order to obtain

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169 personal information from the recipient of a telephonic sales
170 call which may be used in a fraudulent or unlawful manner.

171 Section 5. Section 501.142, Florida Statutes, is amended
172 to read:

173 501.142 Retail sales establishments; preemption; notice of
174 refund policy; exceptions; penalty.--

175 (1) The regulation of refunds is preempted to the
176 Department of Agriculture and Consumer Services notwithstanding
177 any other law or local ordinance to the contrary. Every retail
178 sales establishment offering goods for sale to the general
179 public that offers no cash refund, credit refund, or exchange of
180 merchandise must post a sign so stating at the point of sale.
181 Failure of a retail sales establishment to exhibit a "no refund"
182 sign under such circumstances at the point of sale shall mean
183 that a refund or exchange policy exists, and the policy shall be
184 presented in writing to the consumer upon request. Any retail
185 establishment failing to comply with the provisions of this
186 section shall grant to the consumer, upon request and proof of
187 purchase, a refund on the merchandise, within 7 days of the date
188 of purchase, provided the merchandise is unused and in the
189 original carton, if one was furnished. Nothing herein shall
190 prohibit a retail sales establishment from having a refund
191 policy which exceeds the number of days specified herein. The
192 department may adopt rules pursuant to ss. 120.536(1) and 120.54
193 to enforce the provisions of this section. However, this
194 subsection does not prohibit a local government from enforcing
195 the provisions established by this section or department rule.

196 (2) The provisions of this section shall not apply to the

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197 sale of food, perishable goods, goods which are custom made,
198 goods which are custom altered at the request of the customer,
199 or goods which cannot be resold by the merchant because of any
200 law, rule, or regulation adopted by a governmental body.

201 (3) The department may enter an order doing one or more of
202 the following if the department finds that a person has violated
203 or is operating in violation of any of the provisions of this
204 section or the rules or orders issued under this section:

205 (a) Issue a notice of noncompliance pursuant to s.
206 120.695.

207 (b) Impose an administrative fine not to exceed \$100 for
208 each violation.

209 (c) Direct the person to cease and desist specified
210 activities.

211 (4) The administrative proceedings that could result in
212 the entry of an order imposing any of the penalties specified in
213 subsection (3) are governed by chapter 120.

214 (5) Any moneys recovered by the Department of Agriculture
215 and Consumer Services as a penalty under this section shall be
216 deposited in the General Inspection Trust Fund.

217 (6) Upon the first violation of this section, a local
218 government may issue a written warning. Upon a second and any
219 subsequent violation, a local government may impose a fine of up
220 to \$50 per violation. Any moneys recovered by the local
221 government as a penalty under this section shall be deposited in
222 the appropriate local account.

223 Section 6. Section 506.5131, Florida Statutes, is amended
224 to read:

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506.5131 Return of shopping carts; assessment of fees, fines, and costs.--

(1) The rightful owner of any shopping cart with a registered name or mark found on public property shall be immediately notified of its recovery.

(2) Notwithstanding any other provision of law or local ordinance, no fee, fine, or costs may be assessed against the owner of a shopping cart unless the shopping cart was found on public property and, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and the such fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services. This subsection shall not apply to any ordinance adopted prior to June 2002 that requires a business establishment to install an electronic retention system to retain shopping carts within the real property boundaries of a business location.

Section 7. Subsection (1) of section 525.01, Florida Statutes, is amended to read:

525.01 Gasoline and oil to be inspected.--

(1) For the purpose of this chapter:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Petroleum fuel" means all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzine, ~~or~~ other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this

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253 state.

254 (c) "Alternative fuel" means:

255 1. Methanol, denatured ethanol, or other alcohols;

256 2. Mixtures containing 85 percent or more by volume of
257 methanol, denatured ethanol, or other alcohols with gasoline or
258 other fuels, or such other percentage, but not less than 70
259 percent, as determined by the department by rule, to provide for
260 requirements relating to cold start, safety, or vehicle
261 functions;

262 3. Hydrogen;

263 4. Coal-derived liquid fuels; and

264 5. Fuels, other than alcohol, derived from biological
265 materials.

266 Section 8. Section 527.11, Florida Statutes, is amended to
267 read:

268 527.11 Minimum storage.--

269 (1) Every person who engages in the distribution of
270 liquefied petroleum gas for resale to domestic, commercial, or
271 industrial consumers as a prerequisite to obtaining a liquefied
272 petroleum gas license shall install, own, or lease a bulk
273 storage filling plant of not less than 18,000 gallons (water
274 capacity) within the state and shall be located within a 75-mile
275 radius of the licensed company's business location. This bulk
276 storage filling plant must have loading and unloading provisions
277 solely for the licenseholder and be operated and maintained in
278 compliance with this chapter for the duration of the license.

279 (2) A dealer in liquefied petroleum gas licensed as of
280 August 31, 2000, who has entered or who enters into a written

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281 agreement with a wholesaler that the wholesaler will provide
282 liquefied petroleum gas to the dealer for a period of 12
283 continuous months is exempt from the requirements of subsection
284 (1), if the wholesaler has at least 18,000 gallons (water
285 capacity) of bulk storage within this state permanently
286 connected for storage, which is used as such for each dealer to
287 whom gas is sold, and if the wholesaler has loading and
288 unloading provisions. Such dealer must provide certification of
289 this agreement on a form provided by the department to the
290 department before her or his license may be issued. The form
291 must be signed by both the wholesaler or his or her agent and
292 the dealer or his or her agent and must be submitted annually
293 with the license renewal application. A dealer who does not
294 provide written proof of minimum storage may have her or his
295 license denied, suspended, or revoked. A No wholesaler may not
296 enter into written agreements that allocate an amount of storage
297 that exceeds the wholesaler's total storage capacity minus
298 18,000 gallons (water capacity).

299 (3) A dealer in liquefied petroleum gas operating a single
300 dispensing unit for the sole purpose of direct product sale to
301 customers, including delivery of cylinders of 40 pounds or less
302 of propane gas capacity for use with outdoor equipment or
303 appliances that are not connected to or part of the permanent
304 interior piping of a structure, (no deliveries) or an operator
305 of a cylinder exchange unit is exempt from the requirements of
306 this section. A person may not deliver liquefied petroleum gas
307 by cargo vehicle unless the person complies with requirements
308 for minimum storage.

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Section 9. Subsection (5) is added to section 570.46, Florida Statutes, to read:

570.46 Division of Standards; powers and duties.--The duties of the Division of Standards include, but are not limited to:

(5) Enforcing the provisions of chapter 527.

Section 10. Subsection (2) of section 570.47, Florida Statutes, is amended to read:

570.47 Director; qualifications; duties.--

(2) The director shall supervise, direct, and coordinate the activities of the division and to that end shall, under the direction of the department, enforce the provisions of chapters 501, 525, 526, 527, 531, and 616.

Section 11. Subsections (6) through (9) of section 570.544, Florida Statutes, are amended to read:

570.544 Division of Consumer Services; director; powers; processing of complaints; records.--

~~(6)(a) The office or agency to which a complaint has been referred shall within 30 days acknowledge receipt of the complaint and report on the disposition made of the complaint. In the event a complaint has not been disposed of within 30 days, the receiving office or agency shall file progress reports with the Division of Consumer Services no less frequently than 30 days until final disposition.~~

~~(b) The report shall contain at least the following information:~~

~~1. A finding of whether the receiving agency has jurisdiction of the subject matter involved in the complaint.~~

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~~2. Whether the complaint is deemed to be frivolous, sham, or without basis in fact or law.~~

~~3. What action has been taken and a report on whether the original complainant was satisfied with the final disposition.~~

~~4. Any recommendation regarding needed changes in law or procedure which in the opinion of the reporting agency or office will improve consumer protection in the area involved.~~

~~(7)(a) If the office or agency receiving a complaint fails to file a report as contemplated in this section, that failure shall be construed as a denial by the receiving office or agency that it has jurisdiction of the subject matter contained in the complaint.~~

~~(b)~~ If an office or agency receiving a complaint determines that the matter presents a prima facie case for criminal prosecution or if the complaint cannot be settled at the administrative level, the complaint together with all supporting evidence shall be transmitted to the Department of Legal Affairs or other appropriate enforcement agency with a recommendation for civil or criminal action warranted by the evidence.

~~(7)(8)~~ The records of the Division of Consumer Services are public records. However, customer lists, customer names, and trade secrets are confidential and exempt from the provisions of s. 119.07(1). Disclosure necessary to enforcement procedures shall not be construed as violative of this prohibition.

~~(8)(9)~~ It shall be the duty of the Division of Consumer Services to maintain records and compile summaries and analyses of consumer complaints and their eventual disposition, which

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data may serve as a basis for recommendations to the Legislature and to state regulatory agencies.

Section 12. Section 526.3135, Florida Statutes, is repealed.

Section 13. Subsection (9) of section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.--

(9) INSURANCE REQUIREMENTS.--

(a) An owner may not operate an amusement ride unless the owner has in effect at all times of operation insurance meeting the following requirements:

1. An insurance policy in an amount of not less than \$1 million per occurrence, \$1 million in the aggregate, which insures the owner of the amusement ride against liability for injury to persons arising out of the use of the amusement ride; or

2. A bond in a like amount; however, the aggregate liability of the surety under the bond may not exceed the face amount thereof.

(b) The policy or bond must be procured from an insurer or surety that is licensed to transact business in this state or that is approved as a surplus lines insurer.

(c) The insurance requirements imposed under this subsection do not apply to a governmental entity that is covered by the provisions of s. 768.28(16).

Section 14. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.